

*United States Court of Appeals
for the Second Circuit*



APPENDIX

NO. 75-4186

United States Court of Appeals
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

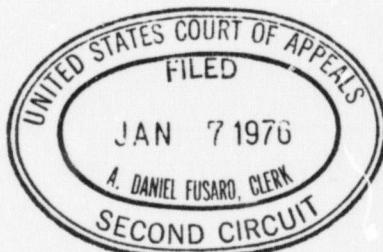
TWO WHEEL CORP. d/b/a HONDA OF MINEOLA,

Respondent.

On Application for Enforcement of an Order of
The National Labor Relations Board

B
P/S

APPENDIX



ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570.

PAGINATION AS IN ORIGINAL COPY

(i)

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APPENDIX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

-----X-----
TWO WHEEL CORP. d/b/a HONDA
OF MINEOLA :
and : Case No. 29-CA-3991
AMALGAMATED LOCAL UNION 355 : Case No. 29-CA-3992-2
-----X-----

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the Matter of: Two Wheel Corp. d/b/a Hondo of
Mineola

Board Case No: 29-CA-3991-2

- 8. 28. 74 Charge in 2-CA-3991 dated
- 8. 30. 74 Charge in 2-CA-3991-2 dated
- 10. 3. 74 Order Rescheduling hearing from November 11, to
November 12, 1974 dated
- 10. 7. 74 First Amended Charge dated
- 10.15. 74 Order Consolidating Cases, Complaint and notice dated
- 10. 24. 74 Request for adjournment from Sanford E. Pollack dated
- 10. 25. 74 Respondent's Answer dated
- 10. 25. 74 Respondent's Demand for a Bill of particulars dated
- 10. 29. 74 General Counsel's opposition in part and reply in part
to demand for a Bill of particular dated

10. 31. 74 Order Rescheduling hearing, dated.
11. 4. 74 Order on Respondent's demand for a Bill of particulars dated
11. 5. 74 Telegram from Sanford E. Pollack requesting adjournment dated
11. 6. 74 General Counsel's Supplemental reply in part to a demand for a bill of particulars dated
11. 6. 74 Letter from Sanford E. Pollack stating that request for adjournment had been made to National Labor Relations Board dated
11. 12. 74 Hearing opened
11. 14. 74 Hearing closed
12. 4. 74 General Counsel's Motion to Correct the transcript dated
2. 24. 75 Copy of Administrative Law Judge's Decision issued
4. 1. 75 Copy of Respondent's Exceptions to the Administrative Law Judge's Decision received
4. 2. 75 Copy of General Counsel's Exceptions to the Administrative Law Judge's Decision received
6. 6. 75 Copy of Decision and Order of the National Labor Relations Board dated

[1]

[6/16/75]

[D--9976
Mineola, N.Y.]

* * * * *

DECISION AND ORDER

On February 24, 1975, Administrative Law Judge Melvin J. Welles issued the attached Decision in this proceeding. Thereafter,

Respondent filed exceptions and a supporting brief, and the General Counsel filed exceptions and a supporting brief, and a brief in reply to Respondent's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,^{1/} conclusions, and recommendations of the Administrative Law Judge as modified herein.

1. Contrary to the Administrative Law Judge, we find that the General Counsel has not sustained his burden of proof with respect to the alleged unlawful surveillance by Respondent of employee Musano during the 2-day period immediately prior to the scheduled union meeting on the evening of August 29, 1974. In support of this allegation, the General Counsel relied primarily on the following evidence adduced at the hearing: (1) The testimony of employee Ardito that 'I was conscious that [Zagarek, one of Respondent's owners] was following me---Glenn [Musano] around'; (2) the testimony of employee Dodge that on one occasion when Musano was speaking to him about the planned union meeting,

^{1/} In his decision, the Administrative Law Judge incorrectly referred to employee Baldasarra as "Baldassar." Additionally, the Administrative Law Judge found, in sec. II, B, 2 of his Decision, that employee Lilker's account of certain events described therein was the most lucid of several similar versions given by various witnesses. The record clearly discloses that Lilker did not in fact testify as to these events. However, the facts as found by the Administrative Law Judge accurately reflect the testimony of the other witnesses and, therefore, this apparently inadvertent error does not affect our decision herein.

Musano saw one of the Zagareks approaching them and said "I catch you later"; (3) the testimony of employee Lilker that on one occasion when Musano was speaking to him Zagarek's son "walked behind Musano"; and (4) Musano's testimony that, while speaking to a union representative on the public phone on Respondent's premises, he saw Zagarek "hovering nearby" and he therefore asked the union representative to call him back on a phone in the parts department.

The mere presence of the Zagareks at various places within the shop is not inconsistent with the performance of the usual functions of management personnel in a relatively small shop, and there is no basis for inferring that their presence therein was not customary. Nor is there evidence that the Zagareks deliberately observed Musano's conduct during this period or that they did so for any reasons related to his union activities. Rather, the testimony here consists mainly of the subjective impressions drawn by the employees of the Zagareks' conduct. In these circumstances, we conclude that the record does not support the finding that Respondent engaged in unlawful surveillance of Musano's union activities.^{2/}

2. We agree with the Administrative Law Judge's findings that Respondent violated Section 8(a)(3) and (l) by discharging employees Ardit, Dodge, Kocivar, Lilker, Musano, and Siegfried and find appropriate his recommended remedy requiring Respondent to reinstate and to provide backpay

^{2/} Cf. G. C. Murphy Company, 216 NLRB No. 113 (1975); West Point Manufacturing Company, Wellington Mill Division, 142 NLRB 1161, 1163 (1963).

to these individuals.^{3/}

While we also agree with the Administrative Law Judge's finding that employee Antonson was unlawfully discharged by Respondent, we do not adopt his recommended remedy to the extent it requires Respondent to reinstate Antonson, for the following reasons. Antonson was a college student who was hired in early summer of 1974. Antonson testified that during July and mid-August he had discussed with Supervisor Fort the possibility of continuing to work during the following

-
- 3/ In its exceptions, Respondent contends that the Administrative Law Judge erred in considering that 50 percent of the unit, rather than one-third to 40 percent of its total employee complement, was laid off, and further argues that this latter percentage is consistent with its normal seasonal reduction in force. While it is true that the number laid off was one-third to 40 percent of the total complement, as asserted by Respondent, we find that the other reasons relied on by the Administrative Law Judge fully support his conclusion that these employees were unlawfully discharged.

We further agree with the Administrative Law Judge's conclusions that these employees, among others, who participated in the Union's demand for recognition on August 26, 1974, were engaged in unprotected activity and that, therefore, Respondent's 2-day suspension of these employees did not violate Sec. 8(a)(3) and (l) of the Act. In so finding, we note particularly that at the time of the demand these employees were assembled in Respondent's showroom and in fact were blocking customer access to Respondent's retail sales area, as evidenced by the following undisputed testimony of Kocivar, one of the participants:

[Zagarek] asked us if we would kindly leave, that we were blocking the area....[He] persisted and asked us many times if we would please leave, again saying we were blocking the area and customers couldn't get through the area, and the union reps again told him that we would not leave.

The Board traditionally has applied somewhat different rules to retail enterprises than to manufacturing plants with

Contd.

school year on a part-time basis, and that Port later informed him that he had spoken with Zagarek and "most probably" Antonson would be able to work during the fall. Antonson, however, admitted that he was informed at the time of his hiring that his employment would terminate in September 1974 when school resumed and that 'I had never been told definitely by either Zagarek or Port that I could in fact work parttime during the school year, but I kind of figured...I would be able to work."

It is clear from the foregoing that Respondent had made no firm commitment to Antonson that he would be permitted to work after the start of the school year. Therefore, at the time of his discharge Antonson was a temporary employee whose employment was to cease in September 1974. In consequence, we conclude, contrary to the Administrative Law Judge, that Antonson is entitled only to backpay from the date of his discharge on August 29, 1974, until such time in September 1974 as his employment lawfully would have been terminated. Accordingly, we shall modify the recommended Order of the Administrative Law Judge to conform herewith.

-
- 3/ respect to the right of employees to engage in union activity on their employer's premises. See, e.g., Marshall Field & Company, 98 NLRB 88, 92 (1952); The May Department Stores Company, 59 NLRB 976, 981 (1944). Thus, recognizing the special interest of an employer operating a retail enterprise in avoiding disruption to his business in areas where customers are normally present, the Board consistently has indicated that a broad proscription of union activity within the selling areas of such an employer's premises is not unlawful. See, e.g., S. E. Nichols Company, 156 NLRB 1201, 1207 (1966); Zayre Corporation, 154 NLRB 1372, 1379 (1965). See also Guyan Valley Hospital, Inc., 198 NLRB No. 28 (1972). In the circumstances of the instant case, and particularly in view of the above-cited testimony, we conclude that the special rule pertaining to retail enterprises is fully applicable herein.

3. The Administrative Law Judge, concluding that the General Counsel had established the Union's majority status, recommended the issuance of a Gissel-type^{4/} bargaining order in view of the serious nature of the unfair labor practices committed by Respondent. Respondent excepts to these findings, contending primarily that the Union's majority status was never demonstrated. While we do not agree with the Administrative Law Judge's computations with respect to the number of employees within the unit, we do agree with his conclusion that the Union's majority status has been established, for the following reasons.

The record discloses that, at a meeting held on August 28, Zagarek presented to the Union a list containing the names of 23 employees who he contended were properly within the unit. Respondent asserts that the list did not include Musano, but as the list is not in evidence this cannot be verified. In initially computing the number of possible unit employees, the Administrative Law Judge accepted the total of 23, and, although having found that Musano had been unlawfully discharged, he did not add Musano to that count. Assuming for the purposes of this decision that, including Musano, there were 24 persons who arguably might have been within the unit, we find nevertheless that the Union had cards signed by a majority of the unit employees. Thus, of the 24 (23 listed plus Musano), it is undisputed that the parties agreed at the August 28 meeting

4/ N. L. R. B. v. Gissel Packing Co., Inc. 395 U.S. 575 (1969).

to exclude 5 individuals, namely, Zagarek's wife, son, daughter, and 2 admitted supervisors, thereby reducing the total number of possible unit employees to 19. Of these remaining 19 employees, Antonson, whom we have previously found to have been a temporary employee, is properly excluded from the unit.^{5/} The record further discloses that two additional employees, William Dowling and Ritchie _____, were high school students working full time during the summer but whose employment it was understood would cease with the beginning of the school year. Consequently, they are also properly excluded from the unit.^{6/} Thus, after eliminating the 3 students employed for the summer, the total number of unit employees stood at 16.

At the hearing the General Counsel submitted into evidence 10 authorization cards, including that of Antonson, in support of the Union's majority status. Since we have found Antonson is properly excluded from the unit, we shall not count his card. We further find, as did the Administrative Law Judge, that the remaining nine authorization cards are valid.^{7/} Thus, having obtained valid cards from 9 of the 16 unit employees, clearly the Union in fact has been designated as the collective-bargaining representative of a majority of the unit employees.

5/ See, e.g., San Francisco Metal Products Company, d/b/a O'Hara Metal Products Co., 155 NLRB 236, 238 (1965).

6/ See, e.g., Georgia-Pacific Corporation, 195 NLRB 258, 259 (1972).

7/ The Administrative Law Judge, concluding that the Union's filing of a representation petition constituted a continuing demand for recognition, counted as valid two authorization

Contd.

Finally, we agree with the Administrative Law Judge's conclusion that the unfair labor practices committed by Respondent herein warrant the issuance of a bargaining order. Thus, Respondent not only discharged Musano, the leading union adherent, at the outset of the Union's organizational campaign, but it proceeded to discharge for unlawful reasons 6 more of the 16 unit employees within 1 week of their participation in the Union's initial demand for recognition.^{8/} In these circumstances, we find, as did the Administrative Law Judge, that Respondent's conduct is so egregious as to preclude the holding of a fair election and to require the issuance of a bargaining order under the guidelines set forth by the Supreme Court in Gissel, supra.^{9/}

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Two Wheel Corp. d/b/a Honda of Mineola, New York, its officers, agents, successors, and assigns, shall:

7/ cards executed after the meeting held between Respondent and the union representatives on August 28. Respondent excepts to the Administrative Law Judge's reliance on these two cards solely on the ground that they were "untimely executed". We find no merit in Respondent's exception. Where, as here, there is no allegation or finding of a separate violation of Sec. 3(a)(5), the continuing nature of the demand and the specific date on which the Union achieved majority status are irrelevant.

8/ In total eight employees were terminated by Respondent, but the allegation as to the eighth was deleted from the complaint. See the Administrative Law Judge's Decision at fn. 6.

9/ Cf. Joseph J. Lachniet, d/b/a Honda of Haslett, 201 NLRB 855, 856 (1973).

1. Cease and desist from:

(a) Discouraging membership in Amalgamated Local Union 355, or any other labor organization by discharging or otherwise discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to organize and bargain collectively as guaranteed in Section 7 of the National Labor Relations Act, as amended, or to refrain from such activities.

2. Take the following affirmative action to effectuate the policies of the Act:

(a) Offer the employees named below, to the extent this has not already been done, immediate reinstatement to their former jobs or, if no such jobs exist, to substantially equivalent jobs, without prejudice to their seniority or other rights and privileges, and make the named employees whole for any losses they may have suffered, in the manner set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy." These employees are: Glenn Musano, Robert Siegfried, David Kocivar, Stewart Lilker, Thomas Dodge, Dario Ardito.

(b) Make whole Albert Antonson for any loss of earnings he may have suffered by reason of the discrimination against him from the date of his discharge on August 29, 1974, until such time as his employment would have lawfully ceased in September 1974, by payment to him of the sum of money he would have earned during this period, less net earnings, if any, to be computed in accordance with the formula set forth in

F. W. Woolworth Company, 90 NLRB 289 (1950), together with interest thereon at the rate of 6 percent per annum as set forth in Isis Plumbing & Heating Co., 138 NLRB 716 (1962).

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Upon request, recognize and bargain with Amalgamated Local Union 355, as the exclusive collective-bargaining representative of the employees in the aforesaid appropriate unit respecting rates of pay, wages, hours, or other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(e) Post at its plant in Mineola, New York, copies of the attached notice marked "Appendix." ^{10/} Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

10/ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(f) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C. June 16, 1975

Howard Jenkins, Jr., Member

Ralph E. Kennedy, Member

John A. Penello, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

[JD-82-75
Mineola, N. Y.]

APPENDIX

NOTICE TO EMPLOYEES

D-9976

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT discharge or otherwise discriminate against any employee to discourage activities in support of Amalgamated Local Union 355, or any other labor organization.

WE WILL give the employees named below their old jobs or, if those jobs no longer exist, substantially equivalent jobs, and WE WILL pay them for the earnings they lost as a result of their having been discharged. These employees are:

Glenn Musano

Thomas Dodge

Robert Siegfried

Dario Ardito

David Kocivar

Stewart Lilker

WE WILL pay Albert Antonson the earnings he lost as a result of his having been discharged, from the date of his discharge on August 29, 1974, until such time as his employment would lawfully have been terminated in September 1974.

WE WILL, upon request, recognize and bargain with Amalgamated Local Union 355, as the exclusive bargaining representative of all

our employees included in the unit description below about their wages, hours, and working conditions and, if agreement is reached, we will sign such agreement. The appropriate unit is:

All parts, service, sales, and mail order employees exclusive of office clerical and professional employees, guards, and supervisors as defined in Section 2(11) of the Act.

WE WILL NOT in any other manner interfere with the right of employees to engage in organizational activities or in collective bargaining, or to refrain from such activities.

TWO WHEEL CORP. d/b/a
HONDA OF MINEOLA
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York 11241, Telephone 212--596--3535.

DECISION

Statement of the Case

MELVIN J. WELLES, Administrative Law Judge: This case was heard at Brooklyn, N. Y., on November 12, 13, and 14, 1974, based on charges filed August 28 and 30, 1974, and a complaint issued October 15, 1974, alleging that Respondent violated Section 8(a)(1) and (3) of the Act. The General Counsel and the Respondent have filed briefs.

Upon the entire record in the case, including my observation of the witnesses, and upon consideration of the briefs, I make the following:^{1/}

^{1/} The General Counsel's unopposed motion to correct the transcript is hereby granted.

Findings of Fact

I. The Business of the Employer and the Labor Organization Involved

Respondent, a New York corporation, is engaged in the retail distribution of motorcycles, motorcycle parts, and related products, and in the service and repair of same, at its principal office and place of business in Mineola, New York. During the past year, it derived gross revenue in excess of \$500,000 from its operations, and during the same period, it purchased goods and materials valued in excess of \$50,000 from points outside the State of New York. I find that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Amalgamated Local Union 355, the charging party herein, is a labor organization within the meaning of Section 2(5) of the Act.

II. The Unfair Labor Practices

A. The Facts

On August 21, 1974 ^{2/} in response to a call from employee Glenn Musano to union business agent Richard Shirk, Shirk met with 3 company employees, Musano, Siegfried, and Ardito, at a restaurant a block from Respondent's business. This group arranged for another meeting to be held after work on Friday, August 23. Musano, during the intervening days, told many of the employees about this meeting, soliciting their attendance. During this period, Respondent's President, Morris Zegarek, was "following Glenn around," and "hovering nearby" him. The day before the meeting, a group of employees discussed the impending union meeting at lunch in the back corner of the Company parking lot, with Ted Port, concededly a supervisor for the Company, nearby. Port testified that he did not report anything about this conversation to Morris Zegarek or to any

2/ All dates herein are in 1974, unless otherwise specified.

other management official. Implicit in his testimony was that he had, as a number of employees testified, overheard the conversation.

Toward the end of the day on Friday, August 23, supervisor Harry Wachter told Musano "I am going to have to let you go." When Musano asked why, Watcher responded, "I think there's a couple of reasons but I don't know what they are, you will have to ask Mr. Zegarek." Musano then went to see Zegarek, and asked him why he had been discharged. According to Musano and employee Dodge,^{3/} Zegarek replied, "Good luck." Musano repeated his question, and Zegarek then said, "Oh, go see Harry." Musano said he had seen Harry, who had said that he should see Zegarek, whereupon Zegarek said, "Well, I don't know. Check with the office." After a few more exchanges of this nature, Musano "said a few harsh words and left." Zegarek gave a substantially different version of this exit interview. He testified that he told Musano he was being fired for incompetence, that if Musano wanted more details, he should check with the office the following week, and that "the profanity was overwhelming." For reasons which will be set forth fully below, I do not credit Zegarek's testimony where in conflict with that of other witnesses in this case, and I find that the circumstances of Musano's termination were as he and Dodge testified.

That night, August 23, 8 of the 10 employees who attended the union meeting signed authorization cards. Employee Lilker signed a card the next day, giving it to Union agent Shirk the morning of August 26. Two other employees signed cards on August 28 (Steindl) and September 3 (Baldasarra).^{4/}

On August 26, union representatives Shirk and Scott came to Respondent's place of business, assembled some 8 or 9 of the employees in the retail selling area, and met with Morris Zegarek.

3/ It was stipulated that Dodge would so testify.

4/ I pretermitted for the moment whether all the cards were of employees in the appropriate unit.

Scott told Zegarek that the union represented a majority of the employees, and requested that the Company recognize it. Zegarek indicated that he would have to check with his attorney and other principals of the Company. Attempts to reach the attorney by telephone were fruitless. When Philip Zegarek, Morris' son, started asking the employees to return to work, Shirk told him to direct his questions to Shirk, that he was "representing the men and I will answer for them." After a further attempt by Zegarek to reach his attorney proved unavailing, Morris Zegarek said that the employees were blocking the aisles, asked someone to call the police, and asked Philip Zegarek to punch the men out. After the police came, and Zegarek signed a complaint for criminal trespass, the employees left. Shirk returned to the plant, and finally got Zegarek's lawyer, David Isaacson, on the telephone. It was arranged that they would meet the following Wednesday at the store. When Shirk asked first Isaacson and then Zegarek about the men returning to work, Zegarek said that the men must be suspended at least until the Wednesday meeting with Isaacson. Subsequently, after Shirk reported to the men outside what had occurred, the men started picketing with signs reading "Honda of Mineola Employees Locked Out," and they continued to picket through the meeting on Wednesday.

As arranged, Scott and Shirk met with Morris Zegarek and attorney David Isaacson, at the store, on Wednesday, August 28. Employee Stewart Lilker attended most of the meeting (all but the early part). The Union repeated its August 26 demand for recognition, and, at Isaacson's request, gave its authorization cards, 9

of them at the time, to Isaacson. The latter then displayed a handwritten list containing approximately 23 names. There then ensued a discussion of the number of employees in the unit, and whether particular cards should be counted. It was agreed that three Zegarek's on the list, Morris Zegarek's wife, daughter, and son, should be excluded and also apparently agreed that Harry Wachter and Ted Port should be excluded as supervisors.^{5/} Zegarek took the position that the cards of Musano and Antonson should not be counted, the former because he was discharged on August 23 prior to signing a card, and the latter because he was a "clerk." There was discussion, but no resolution, of the status of Mark Schmidt, who the Union believed was a supervisor, and two employees, Dowling, and one 'Richie,' who were returning to high school in the fall. Zegarek seemed also to be taking the position that employee Dyroff should not be counted because he had been hired on a trial basis, less than 2 weeks earlier. Scott at that point said, according to Shirk's testimony, that "we no longer had a majority," and that "we would file for an election," apparently also stating that the number of cards was now seven, and the list still stood at 17.

It was also agreed that the employees, with the exception of Musano, could return to work the following morning. There was also some discussion about layoffs, Zegarek stating that he "normally begins laying people off on September 1st." There was an "agreement" or "understanding" with respect to possible layoffs, to the effect that they would be made by seniority in the various departments, attorney Isaacson characterized this as something less than an "understanding." He testified that "Zegarek

^{5/} In the light of a stipulation at the hearing that Wachter and Port were supervisors, it does not matter whether there was agreement on this point at the August 28 meeting.

indicated to Mr. Shirk that if it was at all feasibly possible that in the course of his laying off people in the various departments, they would be so laid off on a seniority basis, if that in fact was possible." The meeting broke up, and the Union then filed representation petition with the Board.

During the next few days, Respondent discharged or laid off some 7 employees. All 7, as well as Musano, who had been discharged August 23, are alleged in the complaint as having been discriminatorily discharged, in violation of Section 8(a)(3) and (1) of the Act.^{6/} Four of the seven, Dodge, Ardito, Lilker, and Kocivar, were told that they were being let go for lack of work. Antonson was assertedly discharged for coming to work 2 hours late on Thursday, August 29, and Siegfried was discharged assertedly because he would not agree to work 2 nights a week. Dyroff, as noted, is no longer alleged as a discriminatee, and there is no evidence in the record concerning his discharge or layoff; we know only that his last day on the job was August 29.

Thereafter, actually beginning with the week ending August 26, Respondent hired a number of new employees into the business. These new employees included one full-time employee in the parts depart-

^{6/} Following the hearing, the General Counsel moved to amend the complaint by striking the references to Steven Dyroff in the operative paragraphs of the complaint alleging a violation of Section 8(a)(3) on the ground that he failed to appear or cooperate, after agreeing to do so. This unopposed motion is hereby granted.

ment, hired in October, two full-time employees in the service department, hired September 21 and October 12, one mechanic hired September 21, one full-time employee in the mail order department, hired August 29, and full-time employee in the sales department hired September 14. In addition, a number of part-time employees were hired, one on August 26, to work in both sales and mail order, another whose hiring date is not set forth, in mail order, and two in sales, one hired the week ending August 26, and the other hired September 11. Some of these employees hired during that period left and were replaced by other new hires, also during the same period.^{7/}

B. Discussion

(1) The 8(a)(1) Allegations

The complaint alleges that Respondent violated Section 8(a)(1) by engaging in surveillance of its employees' union activities, and by offering, promising and granting wages increases, promotions and other benefits to its employees to induce them to abandon their union activities and support.

With respect to the surveillance allegation, the General Counsel relies on the testimony of Musano and Ardito that Morris Zegarek was following Musano around during 2 days between Musano's first having contacted Union business agent Shirk and the Union meeting of August 23, during which 2 days Musano was soliciting the employees' attendance at that meeting. In view of the lack of any

^{7/} Other facts pertaining to the employees hired after August 23, as well as other facts adverted to by the General Counsel in support of the 8(a)(3) and (l) allegations of the complaint, and the General Counsel's request for a bargaining order, will be set forth below as particular issues are discussed.

denial by Zegarek, and also in view of the fact that Zegarek indicated, at the August 28 meeting, that he knew Musano signed his union card after he was discharged,^{8/} I find that Respondent thereby did engage in surveillance, in violation of Section 8(a)(1) of the Act.

The other aspect of the surveillance allegation concerns the existence of television cameras in the service department, with a receiver in the office. As the testimony shows that the television equipment was installed before there was any hint or suggestion of union activity in the shop, and in the absence of any evidence that the equipment was illicitly utilized, I find no violation in this respect.^{9/}

As to the rather broad allegations of the complaint concerning promises, offers, and granting of wage increases and other benefits, the General Counsel in her brief adverts only to an offer by Zegarek to Kocivar of a management trainee position, which immediately preceded Kocivar's layoff. There was nothing said in connection with that offer to tie it in any way to a desire by Zegarek to discourage Kocivar from engaging in union activities, nor is there a sufficient basis in the record from which an inference to that effect could be drawn.^{10/} Accordingly, I find no violation with respect to these allegations of the complaint.

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- 8/ The discharge was late in the day on August 23; Musano signed the card the evening of the 23rd, but the signed card, which Zegarek saw at the August 28 meeting, did not reveal when during that day it was executed by Musano.
 - 9/ That the equipment did provide Respondent with another way of knowing, in this small shop of less than 20 employees, of the union activities of its employees is obvious. That it was so used is, on this record, not shown.
 - 10/ I consider this "offer" and its refusal again in conjunction with the 8(a)(3) allegation with respect to Kocivar.

(2) The 8(a)(3) Allegations

The complaint alleges that Respondent violated Section 8(a)(3) and (l) of the Act by suspending for 2 days, those of its employees who participated in the August 26 meeting and thereafter picketed Respondent. Although the precise sequence of events makes it appear that Zegarek suspended these employees after the employees left the shop and went outside and after Union business agent Shirk requested that they be returned to work, the full story of the meeting, as described by many of the witnesses, most lucidly by employee Stewart Lilker, makes it evident to me that the "suspension" was based on what occurred at the meeting, that it, the refusal of the employees to return to work, with their remaining in the selling area of the shop, and not on any "strike" that thereafter may have occurred. I do not view the conduct of the employees at the meeting as "protected." A meeting had already been arranged between the Union's representative, Zegarek, and Zegarek's attorney, for the ensuing Wednesday, and I also see nothing unlawful in Respondent's refusal immediately to take back the employees, but instead, awaiting the scheduled meeting, even viewing the employees at the moment as economic strikers.^{11 /} I shall accordingly dismiss this allegation of the complaint.

Another portion of the complaint alleges a violation of Section 8(a)(3) and (l) by Respondent in providing 5 employees, Kocivar, Siegfried, Lilker, Ardito and Dodge, "with less employment than they previously had received, and with less employment than they normally would have received, "on and after August 30. As all 5 of

^{11 /} In view of this disposition of the issue, I do not reach Respondent's argument that what it did was a "permitted lockout."

these employees were allegedly discharged for discriminatory reasons on or about the same date, discharges which I find below were violative of Section 8(a)(3) and (l) of the Act, I find it difficult to see how these can be a separate violation of the Act involving "less employment," when there was already no employment. The basis for this allegation, the existence of a "three-two" formula, will be considered with respect to, and is a crucial aspect of, the more conventional 8(a)(3) allegations of the complaint, to be discussed below.

These more conventional 8(a)(3) allegations begin with the discharge of Glenn Musano on August 23, and continue through the discharges (or layoffs) of 7 other employees on August 29, 30 and 31.^{12/}

Turning first to Musano, there is no question but that he was the leading union advocate among the employees, the one basically responsible for bringing the Union on the scene. His activities in this respect, in this small shop, could not help but be known to Respondent. And the testimony reveals that supervisor Port knew of some of these activities.^{13/} Furthermore, as found above, Morris Zegarek did follow Musano around the plant in the interim between Musano's first calling Union agent Shirk and the meeting of August 23, to which Musano invited most of the employees on the job. Finally, Respondent did have the clear opportunity to observe his conduct through the closed television circuit referred to above.

The facts surrounding Musano's discharge emphasize its discriminatory nature. Thus, with no prior warning, Musano was

^{12/} As noted above, only 6 of the 7 will be considered, Dyroff having been amerded out of the complaint.

^{13/} As an admitted supervisor, his knowledge is imputed to Respondent, and it would not matter whether he specifically informed Morris Zegarek of what he observed or overheard, so that his testimony that he did not so inform Zegarek is of no consequence.

told by supervisor Harry Wachter at the end of the working day of August 23, "I am going to let you go." When Musano asked why, Wachter said "There's a couple of reasons but don't know what they are, you will have to ask Mr. Zegarek." Musano went to Zegarek, asked why he was fired, and Zegarek said "good luck," and then responded to Musano's repeating his question "Go see Harry." As noted above, Zegarek never did give Musano an answer. The uncontradicted evidence shows that Musano had been criticized only once, by Harry Wachter for filling out an invoice wrong.^{14/} He had been praised a number of times, and a letter concerning him, with rather fulsome praise, from a customer, had been posted at the shop by management.

The combination of all these circumstances, that is Musano's leading role in advocating the Union to the employees, his work record as evidence by the lack of any significant criticism and the presence of praise, including especial praise to management from a customer, the precipitate nature of the discharge, the "passing the buck" back and forth from Wachter to Zegarek with respect to the reason for the discharge, with neither giving Musano a reason, all add up to a strong affirmative case of a discriminatory discharge in violation of Section 8(a)(3) of the Act.

In its brief, Respondent seems to defend as to Musano solely on the basis of "lack of knowledge" by Respondent of Musano's union activities. I have already rejected this defense. At the hearing, Zegarek advanced a number of other reasons which, he claims, he

^{14/} The testimony indicates that Musano was filling out the invoices in accordance with what he had been told by a previous supervisor, and was told only that thereafter he should do it a different way.

discussed a week earlier with Harry Wachter and with his son, Philip Zegarek, neither of whom was called to testify. These "reasons" included "his work, his performance, his lateness, his absenteeism." As to the lateness and absenteeism, Respondent offered no evidence at all, no personnel records or the like. As to his "work" and "performance," Zegarek mentioned Musano's "continually getting into accidents almost killing me on two occasions on a ladder and finally ending up in a hospital himself. Prior to that, there was continual dropping of boxes. Apparently his sight is a problem and he just doesn't see where he's working." Zegarek added "continually late, not taking orders, not following directions." Not only was there no convincing proof of these derelictions, just as there was no proof at all of the "lateness" or "absenteeism" mentioned by Zegarek, there was not even any attempt made to assign dates or times for any of them. Thus these generalized complaints about Musano, never mentioned to him, could, if they existed at all, have been early in his employment, rather than of recent vintage. Nor was there any particular misconduct or dereliction on Musano's part even alleged to have occurred immediately prior to the discharge. But Musano's activities did occur in the 2 days before the abrupt discharge. The explanations offered by Zegarek, accordingly, bolster, rather than detracting from, the General Counsel's prima facie case that Musano's discharge was discriminatory motivated. I find, accordingly, that Respondent violated Section 8(a)(3) and (l) by discharging him.

With respect to the remaining six employees, Respondent's basic position (the only one taken in its brief) is that they were let go in a normal seasonal reduction in force. At the hearing, however,

based on what was told the employees, as well as on Zegarek's testimony, there seemed to be particular reasons advanced for the discharges of Antonson and Siegfried rather than, or perhaps in addition to, the general "no work" which allegedly formed the basis for the layoffs of the other four. I turn first, however, to a consideration of the discharges from the standpoint of the asserted seasonal nature of the business and the necessity for the layoff.

The evidence is not crystal clear as to the number of persons in the shop just prior to August 23, 1974. At the August 28 meeting, the list that was used by Zegarek and attorney Isaacson contained 23 names. But this list, as noted above, included three members of the Zegarek family and two admitted supervisors, so there were at most 18 employees in the shop at the time, with two of them apparently (again the record is not completely clear on the point) high school students who were not expected to remain as full-time employees once school began shortly thereafter. Thus, starting with the discharge of Musano on August 23, and excluding from consideration the 2 high school students, 8 of the 16 (at most) employees were released by September 1, 1974.

To justify, that is, to show the necessity for, the 1974 layoff, Respondent placed in evidence a graph, prepared by Morris Zegarek for this case "from our books and records," showing "the physical volume and sales volume as it is directly in proportion to manpower requirements," for the year 1971. Zegarek testified that 1971 was a "typical," or "average" year. No other figures were presented, for 1974 or for any other year. Apart from the fact that I have difficulty understanding the exhibit on its face, it obviously proves nothing about 1974. Zegarek testified to the Company's past practice as "Sometime in early September or sooner, we generally lay off between 1/3 and 40 percent of our personnel." As noted,

the employee layoff in 1974 was at least 50 percent.

Most of the employees were told, and most received written notification to the same effect, that Respondent operated under a "3-2 formula," meaning that for each 3 hours of work during the busy season, the employees were guaranteed 2 hours of work during the slow season. None of these employees was told that the 3-2 formula did not apply to employees who had less than 12 months service. Yet, Morris Zegarek, who did not testify he so informed the employees, did testify that the 3-2 formula had such a limited application. Zegarek also testified that the formula did have some application to employees with less than 12 months service, for if such an employee was "recalled after layoff," he would then get 2 hours work for each 3 he had worked during the busy season. At an earlier point, however, Zegarek had testified that he did not "in any way solicit or request employees who had worked... previously to return to work." I regard these two statements as basically in conflict with each other. More significantly, I cannot believe that the Company would inform its employees, without regard to their length of service, of the 3-2 formula, many of them being informed of it at the outset of their employment, would send notices to these employees, again without regard to their lack of 12 months service or the possibility of having 12 months service by the time the slow season began, concerning the 3-2 formula, following up such notices with updates of their hours worked by quarterly periods, all to virtually no useful purpose. Surely these employees with less than 12 months service were led to believe they would be working 2 hours during the off season for each 3 hour segment they worked during the busy season.

This conclusion is bolstered by the hirings immediately preceding and following the September 1 purported economic layoff. There were approximately 6 full-time employees and 4 part-time employees hired between about August 23 and October 12, not counting other new employees hired to replace employees who left the Company after September 1. Respondent in its brief argues that "a close scrutiny of the uncontradicted testimony offered by Morris Zegarek was to the effect that the new employees did not replace the laid off employees in that they possessed skills and backgrounds different from those laid off, but necessary to the economics of the business." In my opinion, Zegarek's testimony did not at all establish that the new employees possessed such different skills, necessary to the operation of the business, as to make their having been hired unrelated to the asserted economic layoffs. For example, Zegarek laid off salesman Kocivar and Dodge for lack of work, but hired a full-time salesman 2 weeks later, and 3 part-time salesmen, 2 even before the layoffs and 1 on September 11. Zegarek's "explanation" was to the effect that the part-timers hired were "racing enthusiasts," and hence would be an asset to the business. Apart from the fact that only 5 percent of the Company's sales were of "racing" cycles, the fact is that Zegarek never even asked Dodge or Kocivar whether they were "racing enthusiasts."

The other purported "explanations" were either non-existent, or even less convincing than the "racing enthusiast" explanation. One such explanation concerned hiring new employees for "warehouse inventory," with Zegarek stating that his accountants "want entirely

new people that have no association with us prior to do the inventory." However, the testimony establishes that regular employees in the parts department had worked on inventory in the past, and continued to do so after September 1. Absent any corroboration of Zegarek's unsupported statement about his accountants' "requirements," I cannot credit his testimony in this respect.

Respondent also argues that at the August 28 meeting between the Union representatives and the Company, Zegarek "agreed" that in the event business called for a layoff, it would be accomplished by seniority within departments, and therefore Respondent was precluded from shifting people from one department to another, "as he might have preferred to do and as he had done in previous years." Aside from the fact that Respondent was not "recognizing" the union, and hence could scarcely be "bound" by any purported agreement, aside also from the testimony of attorney Isacson that Zegarek had said at the meeting only that the employees would be laid off on a seniority basis "if it was at all feasibly possible," it is inconceivable that Respondent could have believed that hiring new employees, as it did, would be preferable to the Union, and that it was precluded from shifting employees around by that "understanding."

Finally, Respondent introduced into evidence an "office memo" dated August 23, 1974, which Zegarek testified he wrote "to the office" at that time, which was headed "End of Season LAYOFF SEPTEMBER," and contained the first names of three employees, the statement "Plus any additional in accordance with business cycle," and the words "Effective week ending August 30." Assuming arguendo that this memo establishes that Respondent

had determined on August 23 to layoff about 4 employees on or about September 1, and that this determination preceded any knowledge by Respondent of its employees' union activities^{15/} Zegarek's own version of the discharges of Antonson (for lateness, Siegfried (because he would not work 2 nights a week), and Musano (the evening of August 23 for an alleged variety of reasons), plus the fact that Dyroff was also let go on August 29, would appear to have obviated the need for any other employees to be laid off as a result of the seasonal slowdown. Indeed, a layoff of about 4 employees, not 8, would have been more in keeping with Respondent's own past practice, as testified to by Zegarek himself.

Furthermore, the events during the intervening days, including the "suspension" of August 26, and returning the employees to work on August 28, with no mention to any specific employee that his tenure was to be only for a day or 2 thereafter, tend to cast doubt on Zegarek's testimony, and its supporting memo "to the office" that the determination had been made on August 23. Coupled, as it must be, with the hirings during that period of about as many, considering 2 part-timers as about equal to 1 full-timer, employees as were let go, and with Respondent's failure to produce any current business records, relying solely on the graph, without any supporting figures even for it, pertaining to its business 3 years previously, and considering also that every employee discharged or laid off had been at the August 26 meeting as union adherents,^{16/} I am convinced that all the layoffs and discharges of August 29, 30, and 31 were discrimina-

15/ But see, of course, the discussion above with respect to Musano.

16/ Rupple alone of that group escaped being discharged or laid off.

torily motivated, as was that of Musano on August 23, already
17/ discussed above.

I have fully considered Respondent's position with respect to Antonson and Siegfried, the two employees ostensibly discharged August 29 and 31, respectively, without regard to the "seasonal" nature of the business.^{18/} As to Antonson, the reason advanced was being 2 hours late on Thursday, August 29. The strong affirmative case applies to him as well as to the others; the offense was minor, and was on the day these employees were coming back to work following the 2 day suspension, and Antonson, as well as others, had been late before without any penalty attaching. As to Siegfried, he was allegedly let go because he did not want to work 2 nights a week. Zegarek also pointed out to Siegfried that his hands were tied because of the Union. Here, too, I am satisfied that Respondent was seizing upon Siegfried's disinclination to work 2 nights a week, already a fact much earlier (in July), as a pretext to rid the Company of a known (by then, of course, the union adherents were all clearly known to Respondent by virtue of the August 26 meeting) Union sympathizer.

One final point needs mentioning at this stage. At the hearing, Respondent seemed to be taking the position that Kocivar was a supervisor, and should not be counted toward the Union's asserted majority status. If he was a supervisor, then his discharge would not be violative of Section 8(a)(3). Although

17/ My finding in this respect perforce does not include Dyroff, for reasons already mentioned.

18/ Even though the brief does not distinguish between these two and the others.

Respondent's brief seems to abandon any contention with respect to Kocivar's status quo employee, I am satisfied, without going into the evidence on the point, that he remained at all times an employee, despite having been given some added "responsibilities" some time in July - responsibilities which were at most to make routine work assignments, without any necessity for the exercise of independent judgment, and with the vast bulk of his duties remaining normal salesman functions.

For all the above reasons, I find that Respondent violated Section 8(a)(3) and (l) of the Act by discriminatorily discharging employees Antonson, Dodge, Lilker, Ardito, Siegfried and Kocivar on August 29 through August 31, 1974.

3. The General Counsel's Request for a Bargaining Order

The General Counsel requests a bargaining order in this case, based on the alleged "serious and substantial" unfair labor practices. In view of my conclusion that Respondent violated Section 8(a)(3) and (l) of the Act by discharging seven of its employees because of their union sympathies and activities, the predicate for issuing a bargaining order, on the authority of N. L. R. B. v. Gissel Packing Co., 395 U.S. 575, and Steel-Fab, Inc., 212 NLRB No. 25, plainly exists. That is, the discharge of 7 union adherents in a unit of approximately 16 employees, would obviously make highly unlikely, if not preclude altogether, the holding of a fair and free election.

It is necessary, before such a bargaining order issue, that there have been a majority of employees desiring representa-

tion by the Union, in an appropriate unit. With respect to the union's authorization cards, all ten presented were stipulated to be authentic. Respondent claims, however, that the General Counsel never established a majority in an appropriate unit, asserting in its brief that "The best that can be said for the Union's claim is that it represented "7 of 17." This contention is based on a statement by union business agent Scott at the meeting of August 28 with Respondent, when Scott, following a discussion of the "list" of employees Respondent had with it, and of the union's cards, expressed the view that "the number of cards we had was seven and the list still stood at 17," so "Arthur [Scott] took the position we no longer had a majority." The Union's failure to press its bargaining request any further at the meeting, however, constitutes neither an admission that it did not have a majority, nor a reason for not counting otherwise valid cards. All that the Union was doing at the time was obviously agreeing (and this is prior to the discharge of all but Musano) to have the Board resolve unit and eligibility questions through the petition it said it was going to, and did, immediately thereafter file. One of the nine cards the Union had at the time,^{19/} was that of Musano, and Scott's statement about "seven" cards was excluding his card because he was fired prior to signing it. Having found Musano to have been discriminatorily discharged, his card is, of course, valid, and to be counted toward the Union's majority. Another of the disputed cards was apparently that of Antonson, who, according to Zegarek, was a "clerk." The

19 / The tenth, that of employee Baldassar, was obtained about a week later.

testimony concerning Antonson clearly demonstrates, however, that his duties include much more than clerical work, and that what clerical work he did perform was more in the nature of "plant clerical" than "office clerical" work in a unit of this nature. His card, too, must be counted toward the Union's majority.

In the light of Steel-Fab, supra, pursuant to which the concern is whether a bargaining order should issue, rather than whether there was "refusal to bargain" at any given point in time, I am also of the opinion that the card of employee Baldassar, although signed after the Union's request for bargaining, should be counted. These conclusions result in the Union having 10 valid authorization cards. Although the precise number of employees in the unit never became fully clarified, the testimony concerning the "list" of August 28 indicates that it contained 23 names, and all parties were in full agreement at the hearing that 5 of the names thereon, the 3 members of the Zegarek family, and supervisors Wachter and Port, should not be included in the unit. This means that at most (including the two employees who were going back to high school) there were 18 employees in the unit, and the Union therefore had, by September 3, 10 valid cards, a majority, out of 18 employees. The unit alleged in the complaint, and set forth below, is clearly appropriate.^{20/}

20/ It is a basic wall to wall unit, with the customary Board exclusions. Respondent does not contest its general appropriateness, and the evidence, thought somewhat sparse, does in any event support a conclusion that the various departments had a sufficient community of interest with one another in this small shop to constitute an appropriate unit taken together.

Accordingly, I conclude that the imposition of an order requiring Respondent to bargain with the Union as the exclusive representative of the employees in the unit found appropriate herein is proper and necessary to effectuate the remedial processes of the Act.

Conclusions of Law

1. All parts, service, sales and mail order employees of Respondent, employed at its Mineola place of business, exclusive of office clerical and professional employees, guards, and supervisors as defined in Section 2(11) of the Act constitute a unit appropriate for purposes of collective-bargaining.
2. The Union during the period here relevant represented a majority of the employees in the unit found appropriate herein.
3. By engaging in surveillance upon its employees union activities, Respondent has violated Section 8(a)(1) of the Act.
4. By discharging or laying off employees Glenn Musano, Albert Antonson, Thomas Dodge, Stewart Lilker, Dario Ardito, Robert Siegfried, and David Kocivar, because of their union sympathies and activities, Respondent has violated Section 8(a)(3) and (1) of the Act.
5. The discharge of the Union adherents herein named constitutes a flagrant unfair labor practice disruptive of conditions which would permit a fair and free election and warrants the imposition of an order directing Respondent to bargain with the Union as the exclusive representative of the employee comprising the unit found appropriate herein.

6. The unfair labor practices found herein affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Pursuant to the mandate of Section 10(c) of the Act, a cease and desist order will be entered against Respondent enjoining Respondent from engaging in the conduct found unlawful herein. Because that conduct was so flagrant and goes to the heart of the Act, it is fairly to be anticipated that Respondent may in the future resort to other conduct violative of the Act to defeat the rights of its employees to organize and bargain collectively. Accordingly, Respondent will be directed to cease and desist from interfering in any manner with those employee rights.

Affirmative relief is also appropriate here. Respondent will be directed to offer full reinstatement to the seven employees found herein to have been unlawfully discharged and to make them whole for lost earnings computed on a quarterly basis plus interest at 6 percent a year, as prescribed in F. W. Woolworth Co., 90 NLRB 289 (1950) and Isis Plumbing and Heating Company, 138 NLRB from the date of their wrongful termination to the date reinstatement is offered. For reasons already set forth, Respondent will be directed, as part of its affirmative obligation, to recognize and bargain collectively with the Union as the exclusive representative of the employees in the unit found appropriate herein. The customary provisions regarding recordkeeping, notice posting, and reporting requirements will also be included.

Upon the foregoing findings of fact and conclusions of law upon the entire record, and pursuant to Section 10(c) of

the Act, I shall recommend the following Order. 21/

ORDER

Respondent, Two Wheel Corp. d/b/a Honda of Mineola, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

- (a) Discouraging membership in Amalgamated Local Union 355, or any other labor organization by discharging or otherwise discriminating against any of its employees in regard to hire or tenure of employment or any term or condition of employment.
- (b) Engaging in surveillance of its employees.
- (c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to organize and bargain collectively as guaranteed in Section 7 of the National Labor Relations Act, as amended, or to refrain from such activities.

2. Take the following affirmative action to effectuate the policies of the Act:

- (a) Offer the employees named hereunder, to the extent this has not already been done, immediate reinstatement to their former jobs, or if no such jobs exist, to substantially equivalent jobs, without prejudice to their seniority or other

21/ In the event no exceptions are filed as provided in Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

rights and privileges, and make the named employees whole for any losses they may have suffered, in the manner set forth in the section hereof entitled "The Remedy." These employees are:

Glenn Musano	Albert Antonson	Thomas Dodge
Robert Siegfried	Stewart Lilker	Dario Ardito
David Kocivar		

(b) Preserve and upon request, make available to the Board or its agents, for examination and copying, all payroll records, reports, and all records necessary to compute the amount of loss earnings due under the terms of this Order.

(c) Upon request, recognize and bargain with Amalgamated Local Union 355, as the exclusive collective-bargaining representative of the employees in the aforesaid appropriate unit respecting rates of pay, wages, hours, or other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(d) Post at its plant in Mineola, New York, copies of the attached notice marked "Appendix." ^{22/} Copies of said notice, on forms provided by the Regional Director for Region 29 after being duly signed by Respondent's authorized representative, shall be posted by it immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous

22/ In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director for Region 29, in writing, within 20 days from the receipt of this Decision, what steps the Respondent had taken to comply herewith.

Dated at Washington, D. C.

/s/ Melvin J. Welles
Melvin J. Welles
Administrative Law Judge

APPENDIX
NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT discharge or other wise discriminate against any employee to discourage activities in support of AMALGAMATED LOCAL UNION 355, or any other labor organization.

WE WILL NOT engage in surveillance of our AMALGAMATED LOCAL UNION 355 employees' union activities.

WE WILL give the employees named hereunder their old jobs back and we will pay them for the earnings they lost as a result of their having been discharged. These employees are:

Glenn Musano	Albert Antonson	Thomas Dodge
Robert Siegfried	Stewart Lilker	Dario Ardito
David K. ...var		

WE WILL recognize and bargain, upon request, with AMALGAMATED LOCAL UNION 355, as the exclusive bargaining representative of all our employees included in the description below about their wages, hours, and working conditions and, if agreement is reached, we will sign such agreement. The employees are:

All parts, service, sales and mail order employees exclusive of office clerical and professional employees, guards, and supervisors as defined in Section 2(11) of the Act.

WE WILL NOT in any other manner interfere with the right of employees to engage in organizational activities or in collective bargaining, or to refrain from such activities.

TWO WHEEL CORP. d/b/a
HONDA OF MINEOLA
(Employer)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE
AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York 11241 Telephone (212)596-3535.

BRIEF AND EXCEPTIONS IN BEHALF OF RESPONDENT

The Respondent excepts to the decision of the Administrative Law Judge in the following areas:

I. The Administrative Law Judge erred when he found that Morris Zegarek followed Glen around and hovered nearby him and attributed this finding, among other things, to a lack of denial by Zegarek. Zegarek nonetheless testified that he had made a decision a week earlier (TR p. 423) to terminate Musano, and that he knew nothing about the Union activities. It is, therefore, apparent that any scrutiny of Musano was done with an eye toward the decision to terminate him based upon reasons that will be discussed hereinafter. Musano's testimony indicated that he was very careful not to do anything which would alert management to the Union activities because he had already been warned by the Union of the possible results of management's obtaining knowledge. He testified unequivocally that he talked about the Union only to employees that he could trust entirely and that he would stop talking when and if he saw any of the Zegarek's (TR p. 34, 241).

II. The Administrative Law Judge erred in finding that Musano was discharged for Union activities. In reaching this conclusion, Judge Wells relies heavily on a letter of praise which was "posted" but fails to take cognizance to the fact that the letter of praise concerned actions performed prior to July 1st which was almost two months before the discharge (TR p. 232).

III. The Administrative Law Judge found that the total number of names which appeared on the August 28th list was 23. He erred, however, in not finding that Musano's name was not included thereon thereby bringing the total number of names to 24.

IV. The Administrative Law Judge erred in finding that the TV monitor system afforded an additional method by which the Employer had an opportunity to observe Musano's conduct. After finding that the installation there-

of was not motivated by animus therein disregard of the testimony of employees as to the inability of the system to pick up audio reception except within three feet of the microphone.

V. The Administrative Law Judge erred in inferring because of the size of the shop that Musano's activities would be known to the Respondent and that information which was obtained by Port (a supervisor) should be imputed to the Employer despite the fact that the employees testified unequivocally utmost secrecy.

VI. The Administrative Law Judge erred in assisting on cumulative and corroborative evidence to bolster the uncontradicted unempeached testimony of Morris Zegarek as to the reasons to the discharge of Glen Musano and fails to take cognizance to the fact that by August 23rd the Employer's seasonal high was drawing to a close with the resulting necessary reduction in the work force thereby affording the opportune time for an employee of questionable competence to be terminated. Musano did not deny his lateness, did not deny his absenteeism, did not deny his failure to follow directions nor take orders, but offered in his defense solely a letter from a satisfied customer some two months earlier. Nevertheless, the Administrative Law Judge refused to accept the testimony of Zegarek in this regard.

VII. The Administrative Law Judge erred in not crediting any of the uncontradicted testimony of Morris Zegarek concerning the supervisory status of Kocivar (TR pgs. 407 through 411) despite the fact that even the witnesses produced by General Counsel corroborated the authority which Kocivar was cloaked.

The Administrative Law Judge erred in failing to give credit to the personnel records of the Respondent (Respondent's 2) which indicated Kocivar would be a management trainee as corroborative of his supervisory status and in this regard summarily dismisses the argument of Respondent

with the statement "I am satisfied without going into the evidence on the point that he remain at all times an employee . . ." relying on the fact that a vast bulk of his duties remained normal salesman functions. Nevertheless the testimony unequivocally indicated that he possessed the authority to independently assign work and the authority to effectively recommend discipline of fellow employees without any independent investigation by management.

VIII. The Administrative Law Judge erred in disregarding the Respondent's contention that Siegfried was discharged because of his inability to work nights and fails to take as corroborative evidence thereof the testimony of Stewart Lilker (TR p. 343) to the effect that nights were extremely important to the Employer who would not permit any employee to be absent during the night hours.

IX. The Administrative Law Judge erred in finding that Antonson was discharged for Union activities and ignored the fact that Antonson was a temporary employee who was terminated in the normal course of events at a time when his employment period ended in accordance with the original hiring (TR p. 428, 432).

X. The Administrative Law Judge erred in including among the valid cards used by him to determine the Union's majority status the card of Kocivar. As indicated above, Kocivar was a supervisory employee and not eligible to vote and, therefore, not included for the purpose of showing a majority.

XI. The Administrative Law Judge erred in including the card of Antonson among the valid cards used to show a Union majority. The Law has been and is that temporary employees are not included in an appropriate unit. The record indicates without contradiction that Antonson was hired on a temporary basis that this fact was made known to him and accepted by

him and that the Employer never changed his mind in that regard.

Since, as indicated above, the total number of employees whose names were on the list of August 28th that if Musano were to be included was 24 and if there was eliminated therefrom the five owners and supervisors, the total number of valid cards necessary for an 8A5 bargaining order would be ten. The Union possessed only ten cards including the cards of Kocivar, Antonson and two employees whose cards were signed subsequent to the demand for recognition. As is obvious, the burden of establishing the majority rests on the Board. At no time did the Board establish the total number of employees in an appropriate unit. The Administrative Law Judge erred in finding that eighteen was the number.

XII. The Administrative Law Judge errs completely in finding that 50% of the employees were released by September 1, 1974. In support thereof, the Administrative Law Judge indicates that Zegarek testified that layoffs were generally between 1/3 and 40% of our *personnel* (emphasis supplied). Clearly the total personnel of the Respondent at the time of the layoffs was 24 (the August 28th list) and the layoff of eight of these employees is totally in keeping with the 1/3 figure generally used by the Respondent, the Administrative Law Judge ignores entirely the animus testimony in the record that the normal work force (unit employees) was between ten and twelve and that following the layoffs of September 1, 1974, the remaining work force continued to be ten to twelve, except for some temporary and part time additions as will be discussed hereinafter.

XII. The Administrative Law Judge erred in including the replacement (Mark Trantham, TR p. 444) of Kocivar (a management trainee) as a new hire and imputing therefrom replacement of employees terminated discriminatorily for Union activities, Kocivar had refused to continue in his management training and was terminated for that reason.

XIII. The Administrative Law Judge erred in counting the replacement of Siegfried as a replacement of an employee discriminatorily discharged. In so doing, he has failed to give credence to the fact that Siegfried was terminated because of his refusal to work the mandatory nights and the requirement of the Respondent to have these positions filled.

XIV. The Administrative Law Judge erred in counting the replacement of John Steindel (Jay Wilner, TR p. 455) as evidence of the Employer's animus, Steindel quit to work for his father and no other laid off employee was able to perform his work (TR p. 456, 457).

XV. The Administrative Law Judge erred in counting for the purpose of showing animus two inventory at the specific requests of the accountants for the Employer (TR p. 459).

XVI. The Administrative Law Judge erred in considering John O'Donnell as a replacement for the purpose of showing animus and not failing to give credit to the testimony that this employee was hired specifically into a V.A. program for which no other laid off employee had the requisite eligibility (TR p. 461).

XVII. The Administrative Law Judge erred in not giving credence to the fact that the two part time racing enthusiasts (TR p. 455) were not hired as a replacement for discriminatees, but were in fact hired in an attempt to build up an area of the Employer's business which could have been improved. The Administrative Law Judge erred further in assuming that because the Respondent did not inquire of his salesmen whether or not they were racing enthusiasts and which they, as a matter of fact, so testified. Obviously, since the business of the Respondent is motorcycles, the expertise of his employees including whether or not they race is a fact known to the Employer whether or not specific inquiry is made.

XVIII. The Administrative Law Judge erred in addition when considering replacements in counted heads as opposed to job slots thereby ignoring

turnover which took place subsequent to September 1, 1974.

XIX. The Administrative Law Judge erred in failing to adopt and accept the evaluation made by the charging party during the August 28th meeting in agreeing with the Employer that the charging party failed to represent a majority of employees in an appropriate unit (TR pgs. 54 and 71).

XX. The Administrative Law Judge erred in failing to accept the Respondent's position that September 1st is the normal time for layoffs which layoffs have occurred each and every year and as testified by the Respondent, the pattern was typical and continuing. The testimony is abundantly clear that the Union was advised of the immediate and impending layoffs and that these layoffs were both expected and accepted by the employees and the charging party (TR pgs. 399 through 403).

XXI. The Administrative Law Judge erred in failing to give credence to the agreement between the Respondent and the charging party to the affect that layoffs would be by departmental seniority (TR p. 344), and erred further in assuming that the hiring of personnel as heretofore depicted was a technique employed by the Employer to capitalize on his understanding with the charging party. In no way did the Respondent believe that the hiring of new employees was in any way a replacement of employees who were terminated for seasonal needs. In this regard, the Administrative Law Judge erred in assuming that an agreement with the Union has no effect upon the Respondent unless the Union is recognized. For clearly, any attempt to circumvent that agreement whether the Union were recognized or not, would be the basis of 8A 1 and 3 violations.

XXII. The Administrative Law Judge erred in assuming that the layoffs of the employees on the seniority basis was agreed to and was binding on the Respondents because the condition precedent according to the testimony of Isaacson was fulfilled and the Employer was "obligated" to layoff the employees in accordance with departmental seniority. The facts demon-

strate that the layoffs of departmental seniority were feasible and actually done.

XXIII. The Administrative Law Judge erred in assuming that on August 28th no mention was made of the fact that employees tenure when they returned would be for only two days in that the testimony clearly establishes that the Union was told and agreed that layoffs were to commence September 1st. The Administrative Law Judge incorrectly interpreted the 3 to 2 formula of the Respondent and failed to give credence to Zegarek's testimony as it appears on Pages 412 through 420 of the transcript.

The Administrative Law Judge incorrectly conceived this ratio as a guarantee that all employees who worked through the busy period would be working through the slack period. This interpretation is inconsistent with all witnesses in the case who have testified that in the past, since the beginning of the Respondent's business, there have been seasonal layoffs with the basic crew dropping to ten employees, that these layoffs existed in 1973, 72, and 71 even though the 3 to 2 formula existed through that period. How then could the Administrative Law Judge interpret the 3 to 2 formula as a guarantee? How can the Administrative Law Judge fail to take cognizance of the notice which was posted by Respondent (Respondent 7 and 8) which contained the clear statement that "continuing employment will be based on seniority, productivity, aptitude, and general attitude." How much better the interpretation advanced by the Respondent through its principal witness Zegarek?

The Administrative Law Judge incorrectly failed to find that the guarantee covered employees only that had already completed twelve months of service prior to January of any year when these employees were asked to sign pledge cards.

The Administrative Law Judge erred in permitting his distaste for the

illusory affect of the 3 to 2 formula by permitting himself the luxury of finding that the formula was in fact a guarantee to employees who had less than one year service, therefore, interpreting inconsistently with the testimony. There is little doubt from the testimony that twelve months of seniority into a feeling and a desire to work as many hours as possible during the season without himself being bound to guarantee employment to any of them. As reprehensive as the Administrative Law Judge may have found this conduct to be, it is not the basis upon which he should have found a violation of the Act.

There can be little doubt but that the legal authorities cited by the Administrative Law Judge support the factual conclusions which he has incorrectly made so no attempt will be made to argue the merits of the legal theory. The error which lies in this case is that the Administrative Law Judge failed to interpret the facts properly and cast upon the Respondent a burden to corroborate and permitted Counsel for the General Counsel whose burden it is to prove the unfair labor practice to shift its burden to the Respondent.



WE WILL NOT in any other manner interfere with the right of employees to engage in organizational activities or in collective bargaining, or to refrain from such activities.

TWO WHEEL CORP. d/b/a
HONDA OF MINEOLA
(Employer)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE
AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street - 4th Floor, Brooklyn, New York 11241 Telephone (212)596-3535.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS
BEFORE THE NATIONAL LABOR RELATIONS BOARD
29TH REGION

-----X-----
In the matter of :
TWO WHEEL CORP., d/b/a/ HONDA OF MINEOLA, :
-and- : Case No.
AMALGAMATED LOCAL UNION 335 : 29-CA-3991-2
-----X-----

16 Court Street
Brooklyn, New York
November 12, 1974

The above-entitled matter came on for hearing, pursuant to
Notice at 11:00 o'clock A. M.

HONORABLE MELVIN J. WELLES, Administrative Law
Judge.

APPEARANCES:

ELIZABETH K. JOHNSON, ESQ.

16 Court Street, Brooklyn,
New York, appearing on
behalf of the General Counsel.

SANFORD POLLACK, ESQ.

Gutterman & Pollack, Esqs.,
71 South Central Avenue,
Valley Stream, New York,
appearing on behalf of the
Employer

ALSO PRESENT:

AMALGAMATED LOCAL UNION 335

37-17 76th Street, Jackson
Heights, New York
BY: DICK SHIRK
ARTHUR SCOTT

* * * * *

PROCEEDINGS

11 ARTHUR SCOTT

* * * * *

DIRECT EXAMINATION

Q. (By Miss Johnson) Where are you employed Mr. Scott?

A. I am employed with amalgamated Local Union.

Q. What is your position? A. Vice President.

Q. How long have you worked with Amalgamated Local Union? A. 20 years.

Q. What is your first involvement with Honda of Mineola? A. My first involvement was August, on a Monday, the date I believe was the 29th that I met with Dick Shirk to approach the management concerning recognition and to get a contract.

Q. Could you tell us what happened? A. Yes, I met with Dick Shirk and Glenn, who I do not recall his last name, and we entered the Honda in Mineola place.

One of the employees pointed out a short fellow who was all and told us this was the boss.

We approached him, he was on the telephone.

I identified myself and also introduced Dick Shirk and told him who he was.

We waited about two or three minutes until he was off the telephone.

I told him who we were again.

That we signed up the majority of his employees and wanted to sit down with a contract for recognition.

He said he was not the soleowner. He had to confer with somebody else and he received another call, I believe we waited patiently until he finished.

He came back to us and said he would try and reach his lawyer. His lawyer was not available.

I said we would wait until his lawyer would become available.

We stayed inside the place two or three minutes. He came over and said he did not think we had his men signed up.

I said to Dick Shirk who was the organizer to show the employer the signed cards that we had. He did not accept the cards.

We continued to wait inside the building, I think he asked us to move to another area which we did and we waited.

He asked us to leave and I said we would not leave
13 until we got recognition.

In the meantime while we were waiting he asked us to go outside again.

I said we would stay until we got recognition.

He called a Patrolman, they came into the place and said to us that we were trespassing.

I asked the Officer if there was a complaint signed that we were trespassing.

He went back to speak to the Boss and at that time he did sign a complaint that we were trespassing and a Policeman entered the building, said to us if we did not leave we would be under arrest.

At that point we left the premises, we went outside. We did not have any cards on us, the cards that read picket signs, the cards that read that we were on strike or what have you.

We went to a stationery store and bought some cards, blank cards and we put the name of Honda employees locked out on them.

* * * *

15 The employer did most of the talking. We said that we had the majority of his employees signed up, we wanted to get a contract.

The employer stated to us that it was slow, he did not have much work and the problem of business was bad.

* * * * *

16 We were not familiar with those names and Steve one of the employees who was one of the employees, he was present at the meeting, a lot of the names that the employer had were not employees that were working at this time.

JUDGE WELLES: Do you know the last names of the employees you are mentioning by first name?

THE WITNESS: No, I do not recall Steve's last name.

We went over the list and we could not reach an agreement.

That is as far as recognition was concerned.

We then left and I said, I will file a petition for an election.

* * * * *

CROSS EXAMINATION

17 Q. (By Mr. Pollack) Did you ever file a petition for recognition? A. If you are talking about a petition for an election, I did that.

Q. You did file a petition for an election? A. Yes.

Q. In relation to the last meeting which you had on Wednesday, which you described, with the boss and the lawyer, when there was a discussion on the eligibility, was it before or after that that the petition was filed? A. After.

* * * * *

18

Q. You said you showed the attorney and the employer at the Wednesday meeting some cards, is that correct? A. Yes.

Q. How many cards did you show him? A. I believe it was nine.

* * * *

19

Q. You said out of this list of 23 names, which the employer showed you, that the managers were not properly included? A. They were on the list.

* * * *

Q. Did you have a discussion concerning the eligibility list which the employer showed you about Glen? A. Yes.

Q. You did discuss Glenn? A. Yes.

Q. Had Glenn been discharged before you first went to Honda? A. Yes.

* * * *

21

Q. I understand that you asked for recognition of the employees? A. Right.

Q. And those were your words? A. Yes.

Q. You said I have a majority of them signed? A. Right.

Q. Did you say anything further describing the employees?
A. No.

Q. On both the occasions? A. On both the occasions, sir.

* * * *

Q. How long a time transpired between the time of your initial demand of recognition and the time when the Police asked you to leave, would you estimate? A. About 15 minutes I would imagine.

Q. During that 15 minutes did you have any employees with you? A. Yes.

22 Q. How many were with you? A. Most of them, I don't recall the numbers, how many were present.

Q. About eight or nine? A. Yes.

Q. During these 15 minutes, what were the eight or nine employees doing? A. Standing.

I think one of them was sitting or stooping in the area.

Q. Right in an about you? A. Yes.

Q. In your immediate facility. A. Yes.

Q. Did there ever come a time when the employer said to the employees why don't you go back to work? A. Not -- if you want to call that, his son asked yes.

* * * *

23 He asked the question, are you fellows going to go back to work.

24 They did not reply

Q. Did they work? A. No, they did not go back to work.

Q. Then ultimately you were asked to leave and you did leave? A. Yes.

Q. You put up a sign you were locked out? A. Yes.

Q. Had the men been punched out at that time? A. I don't know whether he punched them out. I don't know.

Q. When you were asked to leave, you personally were asked to leave, you were asked by the Police? A. Yes.

Q. Did the Police say anything to the employees? A. No, he mainly directed most of the talking to us, Dick and I.

Q. Did anybody ask the employees to leave? A. Oh, yes. I think he asked.

* * * *

25

Q. Did you happen to retain a copy of the employee list that was handed to you on that Wednesday? A. No, none was handed to me.

The lawyer had a list of those employees which I sat down and looked at the list, he never gave me a list.

Q. You looked at it? A. Yes.

Q. I assume you had it in your possession? A. No, it was on a table.

Q. Did you happen to keep a list? A. No.

Q. There was some 23 names on it? A. Yes.

* * * *

26

Q. The Wednesday when the lawyer was there, his name is Issacson? A. Yes, okay.

Q. When David Issacson was there, I am talking about that conversation and as I understand your direct testimony you said there was some discussion about the men returning to work.

27 Basically there was an agreement that they could return to work? A. Yes.

Q. There was held for a later date, as to whether they would be entitled to back pay for those two days if you will, of their non-working? A. Yes.

Q. Was there a separate discussion at that time concerning Glenn? A. Yes.

Q. Okay. Would you tell us who you had, did you have this discussion with? A. Yes.

Q. With whom? A. With the employer.

* * * *

29 Q. You filed a petition for certification or for an election?
30 A. An election.

Q. The same date you had the discussion concerning -- with the lawyer? A. I believe so, I believe it was filed that afternoon.

31 RICHARD SHIRK,

called as a witness, having been first duly sworn in by Judge Welles, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Miss Johnson) What is your name?

32 Q. What was your first involvement in Honda of Mineola?
A. Actual involvement with the men or I received a telephone call, I called my office, I believe on the 19th and received word from our secretary in the office that one of the fellows from this particular shop had called there and would like to speak to somebody from the Union.

I believe this was on the 19th.

Q. Of what month? A. Of August and it was late in the afternoon when I received this message.

The following day, the 20th, I called the person that had called our office and left his name, which was Glenn Musano and talked to him.

When I called it was at Honda so I went, I got him on the phone, I got Glenn to listen and answer the questions yes or no and that I -- because I did not know if somebody was listening

on another extension and made arrangements to meet him the following afternoon at lunch, when they had their lunch break the 21st of August.

Q. Did you meet with him? A. Yes.

33 Q Would you tell us about that? A. I met with Glenn Musano, Ardito Dario and Bob Siegfried at the Colonial Inn, which approximately a block and a half away from Honda, the place of their employment at approximately 12 or 12:30 on Wednesday afternoon.

* * * *

34 I told them to go back to the shop, talk to the guys and try to get as much as they could to come to a meeting on Friday evening after work and Glenn was more or less the spokesman for the three of them, like the leader.

* * * *

They left this meeting, this was their lunchtime, this meeting broke up with the arrangement to meet them on Friday night.

Q. Did that meeting take place? A. Yes, it did.

On Friday we met between 6 and 6:30 and met with approximately 11 men from Honda of Mineola at the Colonial Inn on Jericho Turnpike in Mineola.

* * * *

35 Out of the eleven men that came to the meeting originally only ten stayed.

One was a young boy, 15 or 16 years old.

This is a tavern and restaurant and bar. He was too

young to be in there and he was only working part time and I -- he wanted to sign a card, I elected not to sign his card because he was part time, the part time employee, he left the meeting.

* * * * *

Q. Do you know who signed cards that night?

* * * * *

41 After Arthur and Stu and myself had met with Mr. Zegarek and his attorney, we went down to this Colonial Inn again and we had lunch.

* * * * *

At that time he elected to sign a pledge card for the union.

* * * * *

John Steindl.

* * * * *

42 Q. It was signed on the date that is indicated on the card, 8/28?

* * * * *

Q. Did you receive any additional cards?

* * * * *

On the night of September the 3rd, I had a meeting with a group of fellows from Honda.

This is after they had, we talked to their attorney and they had gone back to work and the sequence of events of the men being discharged and laid up, we had a meeting 43 to discuss the entire situation, and at that meeting I received one more card.

Q. Do you remember who signed the card then? A. I forgot his first name, his last name is Baldasara.

* * * *

44

JUDGE WELLES: I will accept it was a card handed to him by Stu and will not indicate that I will count it against the employer.

* * * *

45

On Monday morning I made arrangements to meet Arthur Scott in the vicinity of Honda of Mineola.

At that time Glenn Musano who had been discharged on Friday, I told him Friday night to meet us there and go in with us when we asked for recognition from the owner.

Arthur, myself Glenn met on the street and walked down to Honda and we went inside and got all the fellows together that signed cards and we went up front and approached Mr. Zegarek and asked him for recognition to Honda, that we felt we had a majority of the people, employees signed up.

Q. What happened? A. Mr. Zegarek was on the telephone when we approached him.

We waited for him to hang up and Arthur introduced himself and we both gave him our business cards and told him what we were there for.

46

He said that he was not at liberty to give us what we were after, he was not the owner or the boss he was a member of the corporation and there were other people that were involved in it and he was not at liberty to give us what we sought.

We asked him who was and were they available.

He said he would not or could not do anything without his lawyer being present.

So we asked him would he please contact his lawyer and get him down here.

Mr. Zegarek picked up the telephone, dialed a number, listened for 10 or 15 seconds and said he could not get an answer, so we had a discussion with Mr. Zegarek in regards to getting recognition and so on and so forth and he walked away from us.

* * * * *

47 During this time Mr. Zegarek had, was asking us to clear the aisles, we were blocking access to the customers would we please go out front and we said no we would like to stay where we were staying and until we get recognition from him or from
48 his attorney or whoever it was at liberty to give it to us.

He said if we did not leave he would call the police. I said something if that is what you think you have to do then you should do that and Mr. Zegarek called the police.

The police came, two officers came in.

They talked to him and came over to speak to us, to Arthur Scott and told us to leave the premises because we were trespassing and he was asked had there been a complaint signed against us and the officer said no and we refused to leave.

That we were staying here.

The Officer went back over to Mr. Zegarek, talked to him, went back to his car and came back in with a complaint pad.

The complaint was filled out. Mr. Zegarek signed it and while this was going on another officer arrived, either a Sergeant or Lieutenant and talked to the officers and talked to Mr. Zegarek.

The complaint was signed. He came over to us, we were standing in a group, Arthur and the fellows involved and said a complaint was signed for criminal trespass, if we did not leave the premises he would be forced to call a bus and have us arrested.

We elected to voluntarily leave the premises then instead of having the fellows arrested and having an arrest record.

I said I will go back in and see if I can get a hold of Mr. Zegarek's attorney.

I went back to the store, there is a telephone on the wall and asked his attorney, Mr. Issacson had answered the phone.

So I asked him when would be the earliest possible time he could meet with us and Mr. Zegarek, and he said that the earliest time he could meet with us would be on Wednesday, the 23rd I believe or the 28th, Wednesday the 28th, and I talked with him and told him what was going on and asked if that was the earliest possible time.

Would there be any possibility the men could go back to work and work until we met, he asked to speak to Mr. Zegarek.

I called Mr. Zegarek and gave him the phone.

He spoke to Mr. Issacson. After three or four minutes he handed the phone back to me.

I spoke with Mr. Issacson again and said what determination was made in regards to the men going back to work.

He said to speak to Mr. Zegarek.

I asked Mr. Zegarek is it agreed for the men to go back to work and he said that the men there must be suspended until we can talk to the attorney.

I said well if that is the case you leave me no alternative then to put up a picket line and strike you until we can talk to you again.

51

He said you do what you have to.

I went back out front and Arthur was standing talking to the fellows and I went up to him, told him what happened.

We had no alternative but to strike.

So I had an accident with my car and I had no picket signs in the car I was driving at that time.

Arthur had no picket signs.

We went down to a stationery store and bought cardboards and magic markers and came back to Honda and wrote on the cards, Honda employees locked out and used these signs to picket with in front of the store.

Q. Then what happened after that? A. We kept the picket line up until we had the meeting on Wednesday morning at approximately 11:00 with Mr. Zegarek and his attorney.

Q. Did you go to the meeting? A. Yes, I did.

* * * *

52 We at that time, Mr. Issacson asked how many people we had signed up, could he see the cards.

I gave him the cards and he took each card individually and wrote the name from the card onto a yellow size legal pad he had sitting at the desk where he was sitting.

53 When he got through going through the cards, writing the names down, he said something to the effect that as far as they were concerned, we did not have a majority of the employee signed.

He said there were 23 people in it, that would be included as employees necessary in this bargaining unit.

So we asked who these people were and what their jobs were.

On this list he included office clerical, I believe, he had his son's name, he had his wife's name and also the managers names that worked in the store.

We went over the list and picked off, I believe, six names and the list was reduced to approximately 17.

Mr. Zegarek said and we felt with the nine cards we still had the majority, Mr. Zegarek said he would not recognize two of the cards, one being Glenn Musano because Mr. Musano had been fired on Friday, prior to the signing of his card and another employee that he said was a clerk.

If clerical employees are not eligible he could not include, accept this card because this man was a clerk this particular individual worked in parts and did writing on order, mail orders, that came in for parts.

He said he is a clerk, does nothing but write. During the discussion we found out this particular employee did more things than write.

He booked orders, packaged orders, did things like that, put stock on shelves.

54

JUDGE WELLES: Off the record.

(Discussion off the record.)

JUDGE WELLES: On the record.

Q. What happened after that? A. Mr. Zegarek still refused to recognize this individual as being part of the bargaining unit because of the work he said he performed.

Q. Did you discuss any other employee? A. Yes, we discussed Glenn Musano.

He had been discharged on Friday and he said for that reason he was no longer an employee of Honda and for that reason he would not recognize Glenn's card.

Q. Do you remember discussing anybody else? A. No, I don't.

Q. What happened after that? A. Well, after our, the number of cards we had was seven and the list still stood at 17, it was so that Arthur took the position we no longer had a majority.

Q. What did he say? A. We would file for an election.

Q. And what happened after that? A. We discussed the men returning to work and that they would not be harrassed or fired or laid off or what have you until the election was pending.

55 Q. What was said about the men returning to work? A. That he would takem back to work with the exception of Glenn because Glenn has been discharged and that they could return to work in the morning and we asked for Artuhr made the request they be paid for the two days that they were on the picket line and he said no.

* * * *

Q. On that day did you go down to file a petition? A. Yes, I did, Wednesday on the afternoon of the 28th.

* * * *

56

CROSS EXAMINATION

Q. (By Mr. Pollack)

* * * *

Q. (By Mr. Pollack) Going to the meeting where you excluded a young man because you felt he did not properly belong in the unit, could you tell us --

MISS JOHNSON: Objection to the characterization.

JUDGE WELLES: Did you say he was a part timer?

THE WITNESS: Yes, he was I believe 15 or 16 years old and working that summer while he was out of school.

* * * *

58

Q. Isn't it a fact you said among other reasons the man was excluded because he was seasonal? A. Yes, I did say that in the statement.

Q. Isn't it a fact that at the meeting which you had with the employer and his attorney on Wednesday on the 28th you had a discussion about the seasonality of the employer's business? A. Correct.

Q. Would you like to tell us about that conversation?

Tell us what you said to him and what he said to you concerning the compliment of his employees? A. Yes, during the discussion with Mr. Zegarek in regard to the men returning

to work and the seasonability of his type of work, his type of business, he told us that he employed 11 to 13, 14 men all year and that he saw no reason why the men that we were discussing would be effected as far as layoffs when they came back to work.

The group we were discussing the original men that signed pledge cards.

Q. Did he indicate to you, he usually had 10 to 12 men compliment of employees? A. Approximately, yes.

Q. Isn't it a fact he said to you because of that seasonality there would have to be layoffs.

59 A. Eventually.

Q. Didn't you agree, agree with him that any layoff would be in order of seniority and in order of the department?

A. Yes.

Q. Did you agree? A. There was no way we would force him or make him agree to something like that, it was discussed.

Q. I show you the last two lines on Page 10 of your statement and ask you to read it out loud starting with the word 'It was' read that sentence. A. It was agreed that if he had to make layoffs that it would be in according to seniority in the departments where he had to cut back.

* * * *

65 Q. Do you recall the identity of the person other than Glenn whose card was challenged by the employer on that Wednesday? A. Not by name, I know who the individual is now.

Q. Is he present in the room? A. Yes.

Q. Would you identify him and possibly have the record show. A. The fellow sitting on the end of the bench.

MR. POLLACK: What is your name.

MR. ANTONSON: Albert Antonson.

Q. Was it Albert Antonson whose card was objected by the employer? A. Yes, it was.

Q. Did the employer give you a reason at the time?

66 A. Yes, the reason was discussed at the time why he was not accepting Al's card.

Q. What was the reason? A. That he was a clerk and we were not including clerical office, office clerical in the bargaining unit.

Q. Did there come a time, did you and the employer reach any agreement as to the total number of eligible people that should be employed? A. No, we did not.

Q. Did a time come when you were directed by Mr. Scott to file a petition? A. Yes.

* * * *

68

RECROSS EXAMINATION

Q. (By Mr. Pollack)

* * * *

70

Q. Did the employer take the position that he was eligible or ineligible? A. To the best of my recollection Mr. Dyroff was not challenged, there were just two challenged cards of the nine to be presented.

Q. Mr. Dyroff, the employer did not tell you that Mr. Dyroff was temporary? A. To the best of my recollection, no he did not.

* * * *

71 Q. Can you know tell me to the best of your recollection the substance of the conversation as it concerned layoffs, that is on the 28th? A. We were discussing with Mr. Zegarek and his attorney about the men coming back to work and that we had an understanding they would not be harrassed, fired or laid off while this election -- while we were going to file for what was pending and in the event business called for a layoff Mr. Zegarek said that he would lay them off by department and seniority.

The last hired first to go and he would, you know, although he did not have to, there was no contract or anything binding, he said he would do this and this was the understanding we reached and left this meeting with.

Q. Now, did he indicate to you when less layoff may be taking place? A. Not exactly, no. He indicated that it would not be in the immediate future.

Q. Isn't it a fact that he told you the business was seasonal?
A. Yes.

Q. Isn't it a fact that he told you that the season generally ends at the end of August with the return to school? A. No, he said that the season was dependent quite a lot on whether, how the weather is at that time of year, if we have a long summer, Indian Summer, then the business is carried further.

72 Q. Before you met with the employer on August 28th, did you have any knowledge of employees being told of seasonal layoffs? A. No, I had the understanding from the men that they had a system where every three hours they worked during the season they would be employed two hours during the off

season or whatever he considered, what his season was, they were not temporary or seasonal employees.

Q. Who was eligible for that three to two ratio? A. All the fellows that were employed, they were given this sheet that was typed up explaining this type of system he had.

Q. It was not your understanding that it was the permanent employees who were eligible for this three to two ratio? A. No.

Q. They did not say anything to you when they became permanent? A. No, it was not, it was my understanding as they were hired, that they were led to believe the winter employment would be dependent upon the employment during the summer.

* * * *

73

MR. POLLACK: Counsel will stipulate that the following employees were hired on about the following dates,

Thomas Dodge, June 1, 1974.

Stewart Lilker, April 13, 1974.

Robert Siegfried, March 9, 1974.

Ardito Dario, January 26, 1974.

David Kocivar, February, 1974.

Albert Antonson, May 25, 1974.

Steven Dyroff, August 17, 1974.

Glenn Musano, June 8, 1974, and that Kenneth Ruppell was hired on June 8, 1974 after a break in service of approximately five months.

MISS JOHNSON: I will so stipulate those would be the approximate dates of hire.

Q. Now, did you discuss with the employees at anytime prior to your meeting of August 28th with the employer, the fact that the employer had a definition of permanent employees?

Did they tell you what a permanent employee was?

A. No, there was no discussion to my knowledge regarding that.

* * * * *

133

CROSS EXAMINATION

Q. (By Mr. Pollack) You were hired by Mr. Z? A. Yes.

Q. Were you a veteran? A. Yes.

134

Q. Were you hired under a veterans program which was in effect in Honda of Mineola? A. Yes.

* * * * *

135

Q. What date did you leave? A. It was on October 5th.

Q. Did you give notice of your quitting before that?

A. No.

* * * * *

140

DAVID KOCIVAR

was called as a witness, and being first duly sworn in by Administrative Law Judge Melvis Welles, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

Q. (By Ms. Johnson) When did you start working for Honda of Mineola? A. I started working for Honda of Mineola on February 2nd 1974.

Q. Who hired you? A. I was hired by Mrs. Zegrek.

Q. For what position? A. Salesman.

Q. What was your salary when you started? A. When I started my salary was two dollars per hour.

Q. Did you receive any raises? A. Yes, I did.

Q. Would you tell us about those? A. The first raise

141 I received was approximately two weeks after I began working at Honda. It was a twenty-five cent increase to two dollars and twenty-five cents per hour.

A few months after that increase I received another twenty-five cent increase to two dollars and fifty cents per hour.

Near the end of May I received a note along with one of my pay checks that I was to receive an increase to two dollars and seventy-five cents as of, I believe, the date was June 5th, and I was to receive another twenty-five cent increase to three dollars per hour as of, I believe, the first week in August.

Q. Did you -- A. I forgot the exact date.

Q. Did you receive those raises? A. I did. At the time that I received the note, I approached Mr. Zegrek at the end of the day and asked him if it was not possible to receive the three dollars per hour raise starting June 5th, instead of waiting until August to receive it, and he thought for a moment and then replied to me that it was possible, and he instructed Mrs. Zegrek to change the books to indicate that I was to receive the three dollars per hour as of, I believe it was June 5th.

Q. And did you receive it? A. Yes, I did.

* * * *

142 Q. Were you ever told your hours might change? A. The only indication that I ever received pertaining

143 to a possible change in hours was in the form of a memoranda from the company pertaining to the winter slow months or the off season.

Q. Do you remember when you received that? A. I believe I received it in May.

MS. JOHNSON: I would like to get this marked for identification as General Counsel's Exhibit Number 4A.

(The above referred to document was marked General Counsel's Exhibit 4A for identification.)

Q. (By Ms. Johnson) Is this the memorandum to which you were referring? (Handing document to the witness). A. Yes, it is.

Q. Who gave it to you? A. Mr. Zegrek.

Q. He handed it to you? A. Yes, he did.

MS. JOHNSON: I will offer General Counsel's Exhibit 4A in evidence.

144

MR. POLLACK: No objection.

JUDGE WELLES: It's received in evidence.

* * * *

MR. POLLACK: I have no objection.

(Whereupon, a Xerox copy was marked General Counsel's Exhibit 4A in evidence.)

Q. (By Ms. Johnson) Did you receive any further communications with respect to your hours? A. Yes, I received an update on the first notice which was a strip of paper from an adding machine or a machine similar to that, and on it it had a tally of the total hours that I had worked and I believe the following three months after I received the original notice with a division and showing the -- an average for the weeks which I had worked in that period.

It was an update.

MS. JOHNSON: I would like to get this marked for identification as General Counsel's Exhibit 4B.

* * * *

145 Q. (By Ms. Johnson) Would you describe now your work on a typical week, what you did first in the morning, for example, and then carrying on through the day?

146 A. Well, in the morning I would attend to customers in the showroom, displaying new motorcycles, accessories, selling new motorcycles, accessories to the customers.

I would also clean the motorcycles in the showroom, display cases and certain items in the showroom which were on display which needed cleaning.

In the early part of my employment I would also open mail in the morning and sort the mail in reference to mail orders coming in and catalogue orders which came in, and I would also address catalogues for shipping out to prospective customers.

* * * *

147 I would also go into the parts department to get certain merchandise which a customer was interested in purchasing.

Occasionally I would go across the street to the other warehouse where I would pick up some merchandise which a customer was purchasing also.

* * * *

152 MR. POLLACK: Objection as to what was to happen.

JUDGE WELLES: Sustained.

Q. (By Ms. Johnson) What happened next? A. Mr. Shirk explained that the following Monday morning he and another business agent from the union were going to enter the building and approach Mr. Zegrek with the request of recognition for the employees which had signed cards that evening.

This was to be 10:30 -- 10:30 Monday morning.

Q. What happened on Monday morning when you went to work? A. Everything was as normal until about 10:30 when I observed Mr. Shirk, Mr. Arthur Scott and Glenn Musano enter the building, at which time Tom Dodge, another salesman, approached Mr. Shirk and asked him if he should summon the other employees who had signed pledge cards to the front of the building and Mr. Shirk told Tom, yes, he should.

Tom proceeded to go to the P. A. system and on the P. A. system asked the other employees to come forward, which they did. Mr. Shirk --

MR. POLLACK: Can I have that last phase or sentence reread, Your Honor, about the P. A. system?

153 A. Mr. Shirk and Mr. Scott approached Mr. Zegrek and I believe it was Mr. Scott who identified himself and introduced Mr. Shirk to him and explained to Mr. Zegrek that they represented the majority of the employees at Honda of Mineola and requested recognition for the union.

Mr. Zegrek explained to them that he was not the person they wanted to talk to, that he could do nothing for them.

He explained that the company was owned by a corporation and that there were other owners to consult, and he went into the office.

We waited in the main showroom area. Mr. Zegrek came out again and he told Mr. Shirk and Mr. Scott that he couldn't help them, that he would have to talk to his lawyer, at which time Mr. Shirk and Mr. Scott requested that he please get in touch with his lawyer and have his lawyer come down.

* * * *

He went over to the telephone, dialed a number, listened for a while, hung up the telephone and said that there was no answer, he couldn't get in touch with his lawyer.

He asked us if we would kindly leave, that we were blocking the area.

* * * *

154 Mr. Zegrek again requested that we leave.

He was told that we wouldn't leave.

He threatened to call the police, and then he did call the police.

155 They responded, came in, they talked to Mr. Shirk and Mr. Scott and Mr. Zegrek.

The police officer came over to us and asked us kindly if we would leave the premises and I believe Mr. Shirk explained to him that we would not leave the premises.

The police officer conferred with Mr. Zegrek, came back to us, conferred with Mr. Shirk and Mr. Scott again.

Finally I believe an officer, a Sergeant or Lieutenant, came in, conferred with the police officer and conferred with Mr. Scott, Mr. Shirk and Mr. Zegrek, at which time Mr. Zegrek signed a complaint charging the employees and Mr. Scott and Mr. Shirk with criminal trespass, I believe.

MR. POLLACK: Objection. This employee has no way of knowing what the complaint said.

JUDGE WELLES: How do you know -- why do you think that complaint charged with criminal trespass?

THE WITNESS: Mr. Scott asked to see the complaint. The police officer showed him the complaint.

JUDGE WELLES: Did you see it?

THE WITNESS: I saw it.

I can't say that I read it all, but I saw it, yes.

Q. (By Ms. Johnson) What happened after that? A. Mr. Scott, after reading the complaint, told the police officer that we would then leave, which we did.

* * * *

156

He went into the building to see if he could get Mr. Zegrek's lawyer's name and phone number.

Q. This is Mr. Shirk? A. Yes, Mr. Shirk.

Q. All right. A. He came out a few minutes later and told us that he got the phone number and he had contacted Mr. Zegrek's lawyer on the phone and that they had arranged a meeting for the following Wednesday morning at 11:30 with Mr. Zegrek's lawyer.

He asked the employees outside if we were willing to go back to work at that time.

We told him, yes, we would. We were going to go back.

He then proceeded to go inside the building, came out a few minutes later and told us that Mr. Zegrek told him that we were all suspended until Wednesday's meeting at 11:30 and that we were not to go back to work, at which time we proceeded to picket.

157

Q. Did you have picket signs? A. We made picket signs from the placards that they bought at the stationery store.

Q. Do you remember what the picket sign said? A. They said, employees of Honda locked out.

Q. Did the picketing end? A. We picketed all day Monday, Monday evening, all day Tuesday, and Wednesday until after the meeting.

Q. What happened after the meeting? A. After the meeting we went down to the Colonial Inn and had lunch, at which time Mr. Shirk and Mr. Scott related to us that they were going to go for a petition, petition to have an election, to see whether or not we had a majority of employees of Honda of Mineola.

* * * *

159

Q. Would you describe the circumstances which led up to your departure? A. I reported back for work that Thursday morning at 9:00 o'clock, and I noticed that two of the employees which were striking out on the picket line with us were not present in the building that morning and I was wondering about this.

I asked around if anyone knew where they were, had seen them that morning, no one knew.

I asked Ted Port, the manager of the mail order department whether or not he had seen Al or Steve. They were the two people who were not present.

Ted said that Al had been fired for lateness, that he did not report to work on time, and --

* * * *

A. (continuing) -- and he did not call in.

* * * *

161 A. On Friday Mr. Zegrek asked if he could speak to me privately some time during the day and I said, yes.

We spoke at about 5:00 p.m. in his office, and he said to me that he wanted me to know there was no animosity between him and I.

He also told me that he wanted me to know that Glenn was fired because of his merits, and he proceeded to explain to me that b^ had no work for a salesman during the winter months but that he was in need of a person who would be in management, and he told me he was considering me for this management,

* * * *

162 MR. POLLACK: Objection.

JUDGE WELLES: Sustained.

Q. (By Ms. Johnson) What did you ask him? A. What did I ask him?

Q. Did you ask him anything further about that? A. Yes. I told him that I didn't understand him. I did not see why I was out of a job at this time, and he then explained that the -- the three -two formula was only in effect if one had a job during the winter time and he reiterated that he had no work for a salesman during the winter time.

Q. What happened after that? A. He told me to go home and think it over, that he didn't want an answer right away, but he wanted one the next day, at which time I left the premises and went home.

Q. Did you go in the next day? A. Yes, I went in the next day and about two minutes after I had punched in on the clock he came up to me and asked me if he could speak to me.

Q. This is Mr. Zegrek? A. Mr. Zegrek. I said, yes. We went into the office.

He asked me if I had an answer for him, and I told him that I did not want to go into management, that I was happy as a salesman, at which time he told me that he would have to let me go, lay me off.

* * * *

163

CROSS EXAMINATION

Q. (By Mr. Pollack)

* * * *

Q. Where did you spend most of your time? A. Most of the time was spent in the showroom area of the building.

164

Q. Did you punch the register? A. Yes, I did.

Q. At what point of time were you permitted to use the register? A. I was permitted to use the register, I believe it was in the beginning of June.

Q. At about the same time you went to three dollars an hour? A. It was before I went to three dollars an hour.

Q. How much before? A. Possibly a week or two.

Q. After you had the discussion about three dollars an hour, though? A. No, it was not after the discussion.

Q. What about going to the bank, did you go to the bank for the employer? A. Yes, I did.

Q. And in those bank deposits was there cash? A. I believe so.

Q. And when did that function commence? A. I don't really know.

Q. Would it be fair to say at about the same time that your access to the register was permitted? A. Yes, it would be fair to say that.

165 Q. Were there other employees who spent most of their time in or about the showroom -- a fellow named Dodge, for instance? A. Yes.

Q. A fellow named Richie, a young high school boy, did some of the cleaning and stuff? A. Yes, I would say that most of his time was in the showroom.

Q. All right.

What about a youngster named Skip? A. He was also working in the showroom.

Q. What was your relationship with these employees? A. I worked with them.

Q. Did you ever suggest to them that they might perform their duties in a particular way or at a particular time? A. Yes.

Q. Were these suggestions normal and regular on your part?

Was it a normal routine, in case you are having trouble with the question? A. It was a normal routine at a certain point of my employment.

Q. Fine.

Commencing from the time when you were permitted access to the cash register, did it become normal from that point forward? A. It was not related with my becoming accessible to the cash register.

* * * *

Q. Well, can you -- do you have any point in time that you could use to place your making suggestions to these employees or the commencement of making suggestions to these employees?

A. One day when I went in to work Phil showed me a list of things which he said I was to be responsible for.

Q. This was a written list? A. Yes.

Q. Could you fix the time when that list was shown to you? A. No, I can't.

Q. To the best of your recollection, could you tell me what was on the list? A. There were a number of items on the list.

I can recall a few of them, I believe.

Q. Well, give us what you can recall. A. Number one would be to empty all the waste receptacles and ash trays.

167 Number two was to make sure all the motorcycles in the showroom were clean.

I believe there was also to make sure the display cases were arranged and clean.

Also restocking a display case which had aerosol products in it, and also to make sure the leather jac' ets, which were hung up on large racks, were in proper order.

Q. That's the extent of what you can recall? A. Yes, sir.

Q. Were there other items on that list? A. I believe there may have been other items, yes.

Q. Well, I thought that you had responded that because of this memorandum you began to make suggestions to the other employees.

Is that your testimony? A. I was told by Phil that the other employees were to come to me when they had nothing to do and I was to make sure that they had something to do, usually from this list.

Q. Would it be fair to say that you were to assign them their work from this list? A. I imagine it would be, yes.

* * * *

168 Q. And were you to do all those jobs personally by yourself? A. No.

Q. You were, in effect, to assign these jobs to the others who worked with you, as well as doing some of them yourself, isn't that correct? A. Essentially. I was told that I was responsible for the list.

Q. As between the three people that worked with you, were you permitted to decide which of the three did what function on the list when they had nothing else to do? A. Yes.

Q. And would it be fair to say that this list was shown you at or about the time that your salary was increased to three dollars an hour? A. I don't know.

* * * *

169 Q. Now, were you ever told by any of the corporate officers or your supervisors that you were a sales management trainee? A. No.

Q. Were you ever told at any time that you were now part of management, the management team? A. No.

* * * *

171

Q. Could you tell us when you first saw this document?

A. The only time I recall seeing it was when Mr. Zegrek instructed Mrs. Zegrek to change the payroll record to indicate that I was to receive the three dollar raise as of a certain date, which he did on top of the card, which I recall.

Q. Could you show me where? A. Yes, right here (indicating).

Q. Those are the words which appear level with the line reading earnings and the words are, raise week ending 6/8, three dollars, et cetera.

I call your attention particularly to the upper right-hand corner where your name and address appear and your social security number. Did that writing appear at the time that you saw the document? A. I don't know.

* * * *

172

Q. All right.

When you had a conversation with Mr. Zegrek concerning the increase to three dollars, did you also discuss with him any changes in what your job would be? A. No.

Q. He didn't describe to you areas of additional functions or responsibilities? A. No.

Q. Did he indicate to you at that point that you were going to be considered as part of management? A. No.

Q. Never did up until the day or two before you -- your employment terminated, is that your testimony? A. That's correct.

* * * *

173

Q. You received an increase of twenty-five cents after two weeks, correct? A. I believe so, yes.

Q. And then you received another seventy-five cent increase before June 8th, you went from two and a quarter to three dollars?

A. Right.

Q. And for those seventy-five cent increases -- for those series of increases, which added to seventy-five cents, it's your testimony that no one from management told you why? A. That's correct.

Q. All right.

174

Now, you indicated that you spent some time addressing catalogues and sorting the mail? A. Yes.

Q. Did any other salesman do that? A. Yes.

* * * *

176

Q. Would you describe physically the setup of the Honda, Mineola location?

By that I mean you described certain departments being on the left and the right and the rear and things of that sort.

177

Are these -- are any of these departments separated or segregated by walls? A. Yes.

Q. Which ones? Could you tell us first which departments are completely separate from any other department, except by means of, you know, access through the doorway?

A. The parts department would be inaccessible, except by an entrance through a doorway.

MS. JOHNSON: From which side?

THE WITNESS: I don't understand.

Q. (By Mr. Pollack) Where did the doorway come from?

A. There were two doors into the parts department.

One was in the rear left-hand portion of the building --

Q. Just tell us which department that door opened into or led to. A. One door opened into a section of the showroom.

Q. The showroom? A. Yes. The other door also opened into another section of the showroom.

Q. Was there any access to the parts department from the service area? A. The only access to parts from the service area was a window.

178

Q. A service counter or window? A. Yes.

Q. All right.

Now, the service area, is that separate and apart from the other areas?

You indicated that there was an entrance to a large garrage door and then a large work area in the back.

Now, were those areas separated from the rest of the operation by walls? A. The service area was separated by walls. However, there was also an archway from the showroom directly into part of the service area. No door there.

Q. Okay. Now, there was a mail order department, I take it? A. Yes.

Q. And was that department separated from the other areas of the establishment, except through means of a doorway?

A. No. They had the mail order -- the mail order department was separated by a partition. However, there was no doorway.

Q. The partition was of what construction, approximately? Was it a wall?

Was it just a bunch of boxes laid up? A. It was a small wall, a section of a wall, yes.

179 Q. From ceiling to floor? A. It may not have been.

Q. And the entrance which did not have a doorway, was it the approximate size of a doorway?

The entrance which did not have a door, was it the approximate size of a doorway? A. Yes.

* * * *

180 MR. POLLACK: Your Honor, with respect to Respondent's 3 in evidence, the dark black lines depict solid walls.

The lighter inked lines depict some sort of separation, being a less than solid wall, a partition of one sort of another and, obviously, the blank spaces would depict entrances into and out of the various locations.

MS. Johnson: Some of the lines are like shelves. Those are not partitions?

MR. POLLACK: Here?

MS. JOHNSON: See, these lines, are those of shelves?

MR. POLLACK: Lines drawn as shading of no meaning.

* * * *

181 Q. In your answering of the telephones did you have actual conversations with the persons on the other end, if they were customers? A. Yes.

Q. Did you handle complaints? A. To an extent, yes.

Q. To the extent that you could? A. Yes.

Q. And if you couldn't, you then turned them over to somebody else? A. Yes.

Q. To whom? Phil or Morris or -- A. Yes.

* * * *

A. These items were items which I was -- were selling directly to a customer.

182

Q. And so in that situation you, quote, helped yourself to parts that you needed in your normal business requirement -- A. Yes.

Q. (Continuing) -- correct? A. Yes.

Q. Did you ever get parts from the parts department and take them to the service department?

Would it be fair to say that it was unusual for you to do that? A. Yes.

* * * *

Q. I am sure there may have been one or two occasions that you did something on an unusual basis, but usually did you perform any functions in the mail order department? A. No.

183

Q. And what about in the shipping department, did you perform any functions there? A. No.

Q. And when merchandise was received, unloading trucks and putting away stock of that nature, did you perform or assist in that receiving process on a usual, regular basis? A. No.

* * * *

Q. You got the request for work from the customer and then completed a work order from that request? A. Yes.

Q. Is it fair to say then that the customer came to the showroom to arrange for work to be done on his motorcycle --

A. Yes.

Q. (Continuing) -- as opposed to going directly to the service area?

184 A. Yes.

Q. All right.

Who else, other than you, completed work orders?

A. Mr. Zegrek, Phil, the other salesmen.

* * * * *

188 Q. In the two days -- during the period after your return to work from the picket line and your last instance of employment, did you have a conversation with Mr. Zegrek concerning the three to two guarantee?

189 A. Yes.

Q. And did he in that conversation explain to you or tell you about a twelve month rule? A. He indicated to me that in order for the three-two formula to be valid for an employee he must have been employed prior to the winter months for twelve months.

* * * * *

REDIRECT EXAMINATION

Q. (By Ms. Johnson)

* * * * *

190 Q. You mentioned in your testimony that you suggested to these fellows ways to perform their duties.

How much of your work day did you -- how much time during your work day did you spend doing that? A. Not very much.

* * * * *

Q. Did you do it every day or just some days? A. I did it most of the days.

I would say probably only about a half hour.

Usually everyone was quite busy handling customers. There wasn't much idle time.

Q. Did you ever hire anyone to work at Honda? A. No.

Q. Did you ever fire anyone? A. No.

Q. Did you ever recommend that anybody be hired?

A. No.

* * * *

192

RECROSS EXAMINATION

Q. (By Mr. Pollack) Did you ever tell Mr. Zegrek or Phil that any of the other workers were not performing their work properly? A. I believe so.

* * * *

Q. Was it part of your job function to tell either Phil or Morris Zegrek about the other employees' work performance?

A. No.

* * * *

193

A. It's possible that Mr. Zegrek might have reprimanded an employee verbally because of a statement -- something that I had told him.

Q. Now, you say it's possible? A. Yes.

Q. Did it happen? A. Yes

* * * *

197

ALBERT ANTONSON

was called as a witness, and being first duly sworn in by

Administrative Law Judge Melvis Welles, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

Q. (By Ms. Johnson) Did you formerly work at Honda, Mineola? A. Yes.

Q. When were you hired?

198 A. I was hired in the latter part of May.

* * * *

Q. What position did you have? A. I was mail order clerk.

Q. What was your rate of pay? A. When I started I was making two dollars an hour.

Q. Did you receive any raises? A. Yes, I have received an automatic raise after two weeks.

Q. Did you receive any other raises? A. Yes, one other one. I got a twenty-five cent raise in the beginning of August, I believe.

* * * *

200 Q. (By Ms. Johnson) You mentioned that Glenn told you about the meeting.

Do you remember when he told you about the meeting?

A. It was either Tuesday or Wednesday of that week.

Q. Was it -- do you remember the time of day? A. After -- the afternoon, I guess.

* * * *

202 Q. (By Ms. Johnson) Would you describe your work in the mail order department?

Take a typical week and just describe what you did.

A. Well, come in, punch in, then I go directly to the mail that arrived in the morning, I go to the automatic letter opener, or whatever, and open the mail.

Then I take the stuff, you know -- let's see -- the mail was like in -- I had to separate the mail into two parts. After Mr. Zegrek separated it, there would be catalogues and I would have money and checks and there would be the orders, and have to separate those and I'd give Mr. Zegrek the money for the catalogues, right, and that was in one pile.

203 Then there would be a separate pile for the orders that had arrived and he would take care of checks and stuff that arrived in those.

* * * *

204 So I told him that a couple of weeks before Ted had told me that I could work during school on -- all day Tuesday and all day Saturday as a clerk, you know, and then wrap boxes and stuff.

Q. I take it from what you said you were planning to go to school? A. Yes.

* * * *

Q. What happened then? A. Well, Thursday morning I came in late to work and there was a misunderstanding between me and Skip.

I told Skip that -- I told Skip that I would be late and he never told Ted and, as a result, I was fired.

Q. What did Ted say to you when you came in that day?

205 A. Well, I came in promptly at 11:00 o'clock, two hours late, and then punched in, went to my position in the mail order department, and Ted called me into the office and he said that he had thought that I had taken my leave, so he had gotten somebody to replace me, and this person that replaced me is one of the people that were hired that Monday when we first went on strike.

Q. What did you say to Ted? A. Well, then Ted said, you know what this means, and I go, well, am I fired, and he says, yes, so I went and punched out and I left.

Q. Had you been late before? A. Occasionally, yes.

Q. What happened then? A. Well, I had a car accident June 1st and I think that Monday I had to report it, so I went to the place in Queens to report the accident and I called Ted about 12:00 and told him I couldn't get there.

He said it was all right, and then a few other times I'd come in a couple of minutes late, half hour or whatever and I was never penalized or disciplined.

Q. Was your work ever criticized? A. No, never.

* * * *

206 **CROSS EXAMINATION**

Q. (By Mr. Pollack)

* * * *

208 Q. (By Mr. Pollack) Are you a one finger typist? A. No. when I was in high school I was clocked at about forty words a minute.

Q. Now, you said that when you were terminated you were told that a replacement for you had already been hired --

A. Yes.

Q. (Continuing) -- is that correct? A. Right.

Q. And that replacement was hired on a Monday prior to your termination? A. Yes, he was.

Q. That was the Monday of the strike? A. Yes.

Q. Of the picketing? A. Right. Yes. Okay.

* * * * *

209 Q. And you did not call the employer during that two hour period? A. Well, I didn't think that it would be necessary.

Q. Yes or no, did you call the employer during that two hour period or not? A. No, I didn't.

* * * * *

210 Q. And at that initial hiring or interview for that initial hiring was there any discussion about what would happen when September came around and you had to go back to class?

211 A. That I would have to go back to school.

Q. That your employment would cease, would end?

A. Right.

* * * * *

Q. All right.

Now, would you tell us about the facts and circumstances surrounding your discussion with Ted about two weeks before your discharge as it concerned part time employment?

Where were you? A. I was in the mail order department and I knew that I'd need work during school months, so I had told Ted that I could be available for work Tuesday and

Saturday.

Q. Did you tell him then or had you told him previously?

A. Oh, I had told him way in advance. I told him like in July.

Q. Okay. So Ted knew about your availability already?

A. Right.

212 Q. And then what happened? A. Ted said --

Q. You went to Ted and said what to him, or did he come to you? A. I went to Ted --

Q. Okay. A. (Continuing) -- most of the time.

Q. And what did Ted say to you and what did you say to Ted in response? A. Ted said that he discussed it with Mr. Z. I'd say all right, and Ted said most probably I would be able to work.

Q. What else did Ted say? A. Well, Ted was -- Ted liked my work, I was in his confidence --

Q. What did he say?

You said thus far Ted said he had discussed it with Mr. Z and most probably you would be allowed to work.

What else, if anything, did Ted say at that moment?

A. Nothing.

* * * *

221 I had never been told definitely from Mr. Z or Ted
that I could, but I kind of figured, you know, I would be
222 able to work those days during the winter.

* * * *

223 GLENN MUSANO

* * * *

DIRECT EXAMINATION

Q. (By Ms. Johnson)

* * * *

Q. When were you hired? A. Somewhere around the beginning of June, the very beginning of June. I am not sure of the exact date.

* * * *

224

Q. What was your position? A. I was a parts man, parts counterman.

Q. What was your rate of pay when you started? A. I started at 2.25 an hour.

Q. Did you receive any raises? A. Approximately a month later I was raised to 2.50.

Q. All right.

Did you receive any additional raises? A. No, that was it.

* * * *

Q. Were you ever told that your hours would change?

A. I was informed by Harry -- Harold P. Wachter that I was hired under a three-two formula. I believe it was Harry. It might have been Mr. Zegrek, but I think it was Harry. I couldn't be sure of it.

225

He said that for every three hours I worked during the summer I would be getting two hours during the winter months.

* * * *

Q. (By Ms. Johnson) Would you tell us what you did with respect to the union campaign? A. Yes. I tried to organize the men and I succeeded, along with help from other people who went along with me.

Q. What did you do first? A. Well, I prodded them during lunch for around a week, I said, let's go down to talk

to somebody about getting a union in and let's go over to Ford, maybe they have a good union, and finally I succeeded in getting three of us to go over there on a -- on an afternoon. I believe it was a Tuesday, I am not sure of the date.

* * * *

226 I got to speak to Mr. Shirk here and talked to him on the phone and he said he'd call me back.

I was on a pay phone in the shop at the time and Mr. Zegrek was sort of hovering nearby and I didn't want to talk with him there and so he called me back on the parts department phone and he talked to me about that -- he said, organize a meeting for Wednesday, which I am not sure of the date on that Wednesday.

* * * *

228 Q. Please tell what you did and who you talked to, if you remember? A. I talked to just about all the employees.

They might have been talked to by other people. I don't know that, but I know I talked to just about all the employees and I know for a fact that some of the management overheard me.

* * * *

I was talking about it at lunch time, I think it was Thursday, and Ted Port was there, that was management, and he overheard me -- you know, he overheard me, Ted, I should have been more -- well --

Q. Well -- A. It didn't make any difference.

Q. Who else did you talk to?

Who else was present when you had these conversations? A. Bob Sigfried, Bob Moraglio, David Kocivar, Albert

Anderson -- Albertson, whatever, Dario Ardito, Stu Lillker, and Ken -- Ken.

Q. Do you remember when you spoke to them? A. Oh, throughout the days preceding that Wednesday before that Friday afternoon, before the Friday afternoon of the meeting.

* * * *

229

Q. Could you describe your separation from Honda?

A. It was Friday afternoon at five minutes to six.

Q. What day was this now, if you remember? A. It was around the 24th. It was a Friday, around the 24th, 23rd, 24th, something like that.

I wanted to get down to the bar where we were going to have the meeting and I asked Harry if I can get off five minutes earlier, ten minutes earlier, could I leave a few minutes earlier.

He said, I have to talk to you in private.

He took me aside and said, I am going to have to let you go.

I said -- I asked him, what does that mean, let me go. Does that mean laid off, does that mean you are firing me. Why are you firing me, why are you letting me go.

He said, I think there's a couple of reasons, but I don't know what they are, you will have to ask Mr. Zegrek.

I tried prodding him a little bit more and he was getting upset, so I said, all right, Harry, forget it.

I went to see Mr. Zegrek and I --

MR' POLLACK: Move to strike, he was getting upset.

230

JUDGE WELLES: Granted

THE WITNESS: Okay

Q. (By Ms. Johnson) What did he say? A. I talked to Mr. Zegrek.

Q. You went to see Mr. Zegrek? A. Yes, I went to see Mr. Zegrek.

I said, why am I fired?

He said, good luck.

I said, why am I fired, again and he said, oh, go see Harry.

I said, I just saw Harry. He said he doesn't know, that you know.

He says, well, I don't know. Check with the office.

So I said, well, you are the office. Why am I fired, and he avoided the question again and I don't remember the exact words and I got aggravated and said a few harsh words and left.

Q. Had your work ever been criticized by any of the bosses at Honda? A. Only once that I can recall.

Q. When was that? A. It was in filling out invoices for incoming goods.

Q. Who said what to you? A. Oh, boy, let's see.

Well, it might have been Harry. I think it was Harry.

231

I think he said -- either it was Harry or Harry told me to go to the office to find out. I am not sure exactly who it was, and he -- whoever it was said that I am not filling out the forms completely on the invoices, and I said, that's the way I was taught how to fill them out by David Lew, who was the assistant parts manager, and this is the way I had been filling them out for three months or however -- two months, three months, whatever it was, and he said not to fill it out

that way any more and I didn't and that was that, and the other time -- no, I was -- never again was I criticized about my work that I can recall offhand.

Q. Was your work ever praised? A. Yes. Yes, I was -- I had some times when my work was praised, I suppose a few times.

I got along very well. I did my job.

MS. JOHNSON: I would like this marked for identification as General Counsel's Exhibit 5 for identification.

(The above referred to document was marked General Counsel's Exhibit No. 5 for identification.)

Q. (By Ms. Johnson) This is General Counsel's Exhibit 5 for identification and I ask you if you have ever seen this before? (Handing document to the witness). A. Yes, I have.

232

Q. When did you see it? A. When it was posted on the bulletin board at Honda.

I am not sure of the date it was posted, but it was in -- during the summer.

I am not sure exactly when.

MR. POLLACK: May I have a voir dire, please?

JUDGE WELLES: Yes.

VOIR DIRE

Q. (By Mr. Pollack) You say this notice was posted? A. Yes.

Q. Where? On what? A. On the wall or on the bulletin board right next to the pay phone behind the cash register in the showroom.

Q. Do you know who posted it? A. I would -- I could only assume. I couldn't tell you.

Q. You don't know? A. That's right.

Q. How long a period of time did it remain posted?

A. Well, I couldn't say that because it was there when I left.

* * * * *

Q. If it will help, the date on the letter is July 1st, '74.

* * * * *

235 A. Well, mornings whoever got there first emptied the garbage and after that we received items.....

* * * * *

We arranged stock, cleaned up stock, straightened up stock, went to the warehouse across the street.

Occasionally went to the warranty room, if we had business there at that particular time, helped customers.

Q. Where is the stock kept that you are referring to?

A. The stock is kept in the warehouse and in the -- and in

* * * * *

236 Q. Would you tell us about that discussion? A. Yes. I was hired as a mechanic but they didn't have any need for a mechanic at the time.

* * * * *

237

Q. (By Ms. Johnson) When you asked Mr. Zegrek about the new assemblers, what did he say to you? A. Well, he said there are three reasons why he didn't make me an assembler.

* * * *

One was that the assemblers, when the season got slow, would be the first to be laid off.

The second reason was he didn't feel I wanted to start as an assembler, but to start as a mechanic right off, and the third was because he needed me in parts, possibly that was because Harry needed me in parts, but it was something to that effect.

* * * *

CROSS EXAMINATION

Q. (By Mr. Pollack)

* * * *

Q. Nevertheless, even though up until that time you had discussed the union only with those individuals with whom you were sure you could trust, you discussed this situation with Ted present, knowing he was there? A. No.

Q. Is that true? A. No, that's not true.

Q. You didn't know he was there? A. No, I knew he was there. That wasn't the only time I hadn't been all that careful. I should have been even before that.

* * * *

Q. (Continuing) -- and read that sentence out loud.

A. I mentioned the meeting to a few people but only the --

Q. People -- A. (Continuing) -- ones I was sure I could trust.

* * * *

MS. JOHNSON: We can stipulate that the mention of Ted Port is not in that affidavit.

* * * *

Q. What is the condition of your eyesight? A. Near-sighted. I use my glasses for driving and for seeing from distances -- let's say from here to the reporter, but for reading I do not use my glasses but I can -- it doesn't -- it's not necessarily that blurry, but it's better without them.

Q. Does your eyesight in any way restrict your ability to perform mechanical work?

246

A. No.

Q. Did you ever have accidents in and about the premises of the employer? A. I had an accident, yes.

Q. Did you ever bump into tables? A. Bump into tables?

Q. Yes. A. I don't remember.

* * * *

Q. Would you tell me what the warranty room is or was? You mentioned that occasionally you would go into the warranty room. A. The warranty room is where parts went that were honored under the Honda warranty and waited to be recalled or, if it wasn't recalled, we would sell them.

I went in there to dig things out that could be sold.

* * * *

247

Q. Was there anybody who normally worked in that section? A. Yes.

Q. Who? A. Dario Ardito.

Q. He did the work in the warranty section? As. He did the warranties.

Q. He did the warranties? A. Which is different.

* * * * *

I believe he was the warranty man from the time I started until the time I left.

* * * * *

Q. So, as far as you know, he continued to do the warranty work until the time you left? A. Right

* * * * *

248

Q. What did he say to you as it concerns the assemblers and layoff in the slow period? A. He said, as far as people in the shop, meaning the mechanical type work that was being done, the assemblers would be laid off first, that's what he said.

Q. When? A. Whenever there was a shortage of business coming in, I suppose -- no -- that's a supposition I am making.

Q. Did he say anything about the slow period? A. Did he say anything about the slow period?

* * * * *

Q. Did you have a conversation with anybody in the employ -- any of the fellow workers at Honda as to slow periods and busy periods and things of that sort? A. Yes, I did.

249

Q. Okay. With fellow workers or with supervisory -- bosses? A. Both.

Q. All right.

And do you know whether or not there was, in fact, slow periods for Honda? A. Yes.

* * * *

251

Q. So you understood that there was a slow period between late fall and mid-winter? A. Mid-winter, right.

* * * *

DARIO ARDITO

* * * *

252

DIRECT EXAMINATION

Q. (By Ms. Johnson) Did you formerly work at Honda of Mineola? A. Yes.

Q. When did you start working there? A. About the middle of January, 1974.

* * * *

Q. What was your pay when you started? A. Two dollars an hour.

Q. Did you receive any raises? A. Yes, I was given a raise after about a -- after about two weeks to 2.25 an hour and then again after about two months after that to 2.50 an hour.

* * * *

253

Q. How did it happen that you switched to the parts department? A. Two guys in the parts department left on the same day, so they were shorthanded, Harry Wachter, the parts manager, asked me if I would like to switch over.

I said, yes, and he said he would try to arrange it, which he did.

* * * *

Q. Were you told ever that your hours would change? A. I received a piece of paper once that said that for every three hours that I worked during the busy season I would be guaranteed two hours during the slow season, and I think I was guaranteed thirty-eight hours a week.

* * * *

255 Q. Do you know when that was installed? A. That was installed around the beginning of August, I think. The first week in August.

* * * *

257 Q. Did you return to work on August 29th? A. Yes, I returned to work that day.

Q. Would you describe your separation from Honda?

A. It was the day after that, it was a Friday and I punched my card to go home, it was six o'clock and Mr. Zegrek called me into his office, apologized that he had let me punch out before calling me in there, and said that it would only take a minute or two.

At that time he explained to me that business was slowing down, the next month could be expected to be a lot slower.

He said that he was going to have to lay me off because of that, because there would be no work for me to do.

Then he started talking about the other guys who had been laid off and he said to me that if it hadn't been for the

union business, which he called it union business, he might have been able to shift the other workers into other areas around the store to work, rather than letting them go,

* * * *

258 Q. Do you recall having lunch on either Thursday or Friday, August 22nd or 23rd, with either Glenn Musano and other employees in the parking lot? A. Yes.

Q. Was Ted Port present for any of those conversations? A. Yes, on one occasion Ted Port was there.

Q. Would you tell us about the conversation then, what was said by whom? A. Six or seven employees, including Glenn Musano and Ted Port was sitting around more or less in a circle in the far -- the back corner of the parking lot when I arrived.

I sat down and they were discussing the union openly in front of Ted, and I had sat down next to Glenn -- no, I had sat down, rather, next to Ted and Glenn was directly across from Ted and doing most of the talking and I said to Glenn, you know, shush, be quiet, please, you know, and he gave me an indication that Ted was okay, you know, that

259 it was all right to talk with Ted present.

I still wasn't happy about it, but I didn't say anything further about it.

* * * *

CROSS EXAMINATION

Q. (By Mr. Pollack)

* * * *

260 A. I was conscious that Morris Zegrek was following me -- Glenn around.

Q. Was following Glenn around? A. Yes.

MR. POLLACK: Will Counsel for the General Counsel stipulate that in the fourteen page affidavit of this witness not one mention is made of the conversation in the driveway concerning the Ted incident as testified to by both this witness and the earlier witness?

* * * *

MS. JOHNSON: We will so stipulate.

* * * *

261 Q. Could you tell us now exactly what it was that Mr. Z said to you?

* * * *

A. Okay. I was -- I was walking out -- I was about to go home and he called me into his office and he started explaining to me that he said this is the time of year that business normally slows down and I start laying people off.

He explained that business, you know, drops a certain percentage, I forgot what that percentage was, and that the next month would be considerably slower.

Q Meaning September? A. Meaning September, yes.

* * * *

Then he started talking about the other boys that had already been laid off, Bob Siegfried and Stu Lillker and, I think, Tom Dodge had also been laid off, and he

262 said I could have switched those guys to another department to work and kept them on but with this union business, I am forced to let them go.

* * * *

Q. (By Mr. Pollack) Now, you heard Mr. Shirk testify, did you not? A. Yes, I was here.

Q. And did you hear him testify about an agreement about laying people off within seniority within the department or by seniority within the department?

263 A. I remember the seniority part but I don't know about the department.

* * * *

Q. In your conversation with Mr. Zegrek on Friday, the night that you were terminated, were you told anything about the -- the union agreement restricting the layoffs to departmental seniority? A. No, I don't think I was specifically told that by Mr. Zegrek.

Q. He said that he can't move the people around any more, is that correct? A. He said that, yes.

Q. That he can't move the people around any more?

A. Yes.

Q. Did he tell you why he couldn't move them around any more, why he couldn't? A. He said because of the union he wouldn't move them around.

* * * *

264 Q. Yes. A. I usually worked in the parts department.

Q. Isn't it a fact that you usually worked in the warranty

section across the street? A. No. That took up some of my time, but the great majority of my time was in the parts department.

Q. Whenever there was work to do in the warranty section, who did it? A. I usually did it.

Q. Anybody else? A. Occasionally I had help.

Q. You had help but you were working even when you had help? A. Well, people would go over by themselves sometimes to sell a tank that had never been recalled a gas tank.

* * * *

268

ROBERT SIEGFRIED

* * * *

DIRECT EXAMINATION

Q. (By Ms. Johnson)

* * * *

Q. When were you hired? A. I was hired in the beginning of March.

* * * *

269

Q. What were you hired -- what job were you hired for?

A. I was hired as a mechanic.

Q. What was your rate of pay when you started? A. Two dollars an hour.

Q. Did you receive any raises? A. Yes, I did.

Q. Would you tell us about that? A. After thirty days I received a raise to two and a quarter, I believe, and then I received two raises further.

One was in the beginning of June and one was in August.

Each was a quarter higher, so by the end of August I was making 2.75 an hour.

Q. What were your hours initially when you started? A. My initial hours at Honda were nine to nine on Monday and Thursday and nine to six the other days of the week, except for Sunday.

Q. Were your hours ever changed? A. Well, my hours did subsequently change.

Initially I worked six days a week and two nights, and, after working about four months those particular hours, I began to experience a family hardship and I asked some time starting in July for one of the nights off, you know.

270 Q. Do you remember who you asked? A. I asked Mr. Zegrek and he agreed to let me have the nights off.

MR. POLLACK: Is that nights, Mr. Reporter?

THE WITNESS: Nights, just the nights.

MR. POLLACK: He is saying nights and I don't --

Q. (By Ms. Johnson) You initially said you worked two nights a week. A. Right

Q. And what was the change then? A. I changed to one night a week and working Monday nights. By the beginning of August I had only been working Monday nights.

Q. Were you told of any other changes in your hours? A. Well, when I was hired I had been told that it was one of the few shops that kept its employees on over the wintertime and subsequently in May some time I received this letter, which I don't have, stating that the three-two formula, which was for every

three hours I work in the summer I would be guaranteed two hours in the winter.

Q. Do you remember who gave you the letter? A. Mr. Zegrek.

271

Q. When you mentioned you were hired, you were told that Honda kept its employees on, do you remember who told you that? A. Miss -- I am not sure exactly whether it was Mr. Zegrek or Mrs. Zegrek, but during the year there were, you know, especially with my asking for nights off, repeated reminders that it might effect my three-two formula for the wintertime, you know, so I was told that there was to be winter employment, I would have winter employment.

Q. Now, we're going to pass over the union organizing drive and the meeting and request for recognition -- A. All right.

Q. (Continuing) -- and turn now to your -- your separation from Honda. A. No, I am not.

Q. Could you tell us -- are you still working at Honda?

Q. Would you tell us about your separation from Honda? A. I returned to work on Thursday and then Friday some time, I believe it was in the morning, Mr. Zegrek asked to speak with me.

I went into his office and we had a conversation in which he said that the company had certain demands and that he understood that I might have certain demands of the company, and he wanted to see what my demands were and he stated his demands for the company.

Now, at this time he took issue at the fact that I was only

working one night of a week and said --

MR. POLLACK: Can we have the substance of the conversation?

272

Q. If you recall, say what he told you.

JUDGE WELLES: Just what he said, rather than took issue.

THE WITNESS: Okay.

A. He said, we need the mechanic to work two nights a week, and at that time I really gave no reply, except that it had been a hardship.

Then he asked me if there were any other things, you know, to submit them in writing the following morning.

He didn't want me to give him an answer right away but, you know, to give him the following morning.

He also mentioned to me about other employees, we talked about other employees that had been laid off, specifically Tom and Stu, and he went into their layoffs as far as the union was concerned.

He said -- he said, as a union man you should understand that his hands were tied, that he couldn't switch these other people around to different areas and that, therefore, when the slow season came he had to let them off.

It was something to that effect. You know, I am not definitely sure of the exact words.

Q. Did he say anything further to you in that conversation that you recall?

273 A. No, I don't -- I don't -- I am trying to remember.

Q. Did you continue working at Honda? A. Like, I came in the following morning and Mr. Zegrek called me into his office to ask me what demands or what decisions I had made. I told him --

Q. Did you know what he meant when he referred to decisions? A. Yes. He had specifically -- it comes back to me -- he specifically mentioned the nights, as I said, and any other grievances that I might have.

So, the first thing I told him when I came back Saturday was that nights was a very important issue with me, you know, because of, you know, my family problem, and at that point then he said, well, you know, the company needs take precedence over your needs and we'll have to let you go.

Then again he mentioned about the union, that his hands were tied, and that he couldn't do anything, you know, to help me change me to a different area or anything like that, and you know, at that point I was laid off and I asked him if, you know, he would contest my unemployment, you know, if there was any prejudice, and he said no, and that was it.

I was laid off. I took my tools home at the end of the day and that was my last day of employment there.

274 MS. JOHNSON: I have no further questions.

MR. POLLACK: Do you have an affidavit?

MS. JOHNSON: Yes. (Ms. Johnson handed a document to Mr. Pollack.)

JUDGE WELLES: Off the record.

(Discussion off the record.)

JUDGE WELLES: On the record.

CROSS EXAMINATION

Q. (By Mr. Pollack) Did Mr. Zegrek tell you in this conversation on the night before your employment was terminated when the slow season began? A. Yes, he said to me on September 1st.

Q. And did he indicate to you that your request to put -- his request of you to put in the two nights per week was to commence during that period on September 1st? A. I don't -- I don't recall.

Q. What date was it that you had the conversation? A. Well, we had the conversation on --

Q. On a Friday? A. Yes, it was on the Friday before I was discharged. I don't -- it was the end of August. It might have been the last Friday.

Q. Your next night working would have been what, had you accepted the quote, offer, unquote? A. Monday. Monday.

275

Q. That would have been Monday, the 2nd? A. Yes.

Q. Which, incidentally, would have been Labor Day, but your conversation was on Friday, August 30th? A. Right. Right.

Q. All right.

During that conversation did Mr. Zegrek indicate to you that he would cut down on your other hours because he needed the coverage at night? A. I don't understand the question.

Q. Did Mr. Zegrek say that he needed the coverage at night? A. Yes.

Q. And did he say that in order to avoid a hardship to you, he would cut down or let you start at twelve o'clock on a couple of days? A. Yes.

Q. And so that the total work which you were asked to perform in terms of hours would be basically the same hours?

A. I don't follow that.

Q. Well, all right. A. The issue -- the issue was not the hours that I worked, the amount of hours, because I told him that --

Q. Excuse me. A. Alright.

276

Q. Is it your testimony that Mr. Zegrek offered to cut down on some of the daily hours in order that you could work at night?

A. That was his proposal.

Q. Looking through your sequence of employment, there came -- initially you were working two nights a week? A. Correct.

Q. Am I correct in stating that there came a time when you asked for sporadic or occasional nights off? A. Yes, that was in July.

Q. In July you asked for occasional nights off? A. It turned out to be three nights off that month.

Q. Then did there come a time when after the sporadic nights were granted you, that you had a discussion with management concerning the necessity for one night off a week -- A. I did.

Q. (Continuing) -- on a steady basis? A. I did.

Q. And would it be fair to say that that discussion occurred on or about the last week in July? A. Yes. Yes, sir.

Q. And from that period on until the date you were terminated you worked basically on overtime and overtime basis eight hours on Friday -- on Saturday,

* * * *

277 Now, did you suggest to Mr. Zegrek that possibly men could be rotated to fill that -- that evening that you couldn't work? A. I did.

Q. And did -- what did Mr. Zegrek reply to that? A. That it was unfair to the other workers who had been there longer than I had to work those nights.

* * * *

278 -- in the past he had moved people to different departments as the season got slow to compensate for the slowdowns in their own areas, and that with the union business or -- I don't remember if he -- I think he might have used the word agreement, he would have to go by seniority or departments, you know.....

* * * *

279 why he couldn't change people from department to department, which he had done in the past.

* * * *

KENNETH C. RUPPLE

* * * *

280 DIRECT EXAMINATION

Q. (By Ms. Johnson) Where do you work? A. I am presently employed at Honda of Mineola.

Q. When did you start working there? A. I was hired in the beginning of September, 1974 and worked there for approximately three months and then I left for a job with another motorcycle dealership as a mechanic.

* * * *

Q. It was in September, '74 or '73? A. '73, excuse me.

* * * *

I was laid off from the job at the other motorcycle dealership and after a time I was rehired at Honda of Mineola in the very beginning of June, 1974.

* * * *

281

I was hired as a parts man.

Q. What was your salary when you started the second time? A. I believe when I started the second time I was re-hired at 2.25 an hour.

Q. Did you receive any raises? A. Yes, I had.

Q. Would you tell us about the raises? A. I -- in July, on or about June, I received a raise of twenty-five cents an hour and approximately three weeks ago I received another raise of thirty-five cents an hour.

Q. Who was your boss? A. I am responsible to Harry Wachter and Mr. Zegrek.

Q. What are your hours? A. Presently I work from nine to five Monday through Saturday -- Monday through Thursday, nine to six Monday -- Friday and Saturday.

- Q. What were your hours previously --
282 A. Monday --
Q. (Continuing) -- in June, for example, when you started again? A. Mondays and Thursdays 9:00 a.m. to 9:00 p.m. and the rest of the week, except Sundays, 9:00 to 6:00 p.m. -- 9:00 a.m. to 6:00 p.m.

Q. When were you told that your hours would change?
A. My hours were changed because I started going to school at night.

* * * *

- 283 Q. (By Ms. Johnson) Since August 23, the night of the meeting, which we decided not to rehash further, are you aware of any new employees at Honda Mineola? A. Yes.

* * * *

- 284 In the parts department we have -- we had a new employee who was in charge of inventory, his name was Brian, he had an accident and couldn't come back to work.

Q. Do you remember when he came on? A. Approximately three or four weeks ago. So to replace Brian we have had a new fellow in his position named Jim.

* * * *

And the service department there are two men doing assemblies.

There's also a new mechanic named Jay, and in the mail order department there is one new full time employee and one part time employee. The part time, his name is John.

* * * * *

And in the sales department there was a new employee hired, his name was Mark, but he's no longer with us. There is a new fellow in his place. I am not sure of his name.

* * * * *

322 MR. POLLACK: I believe that both parties will stipulate to the following:

Firstly, that all witnesses, if called by the Government, would testify to the facts and circumstances surrounding the original demand for recognition on Monday, and the following picketing period, substantially in the same way as did Scott, Shirk and Kocivar.

MS. JOHNSON: And their participations therein.

MR. POLLACK: And their participation therein, yes.

MS. JOHNSON: Now, do you want the list of witnesses on that, because that's in paragraph 15?

MR. POLLACK: Just refer to it.

MS. JOHNSON: All right.

MR. POLLACK: And that the witnesses that are encompassed by this stipulation are identified in paragraph 15 of the complaint.

* * * * *

324

STEWARD LILKER

called as a witness, was first duly sworn by Judge Welles and testified as follows:

DIRECT EXAMINATION
BY MS. JOHNSON

* * * *

Q. When were you hired? A. April 8th.

Q. Of what year? A. This year, 1974.

Q. Who hired you? A. Morris Zegarek.

Q. Would you describe your hiring interview, saying what he said to you and what you said to him, please? A. Yes.

Well, the first thing I did when I went down, before I went down, was I sent a letter to Honda of Mineola, an introductory letter introducing myself to Mr. Zegarek.

I told him a little bit about myself.

Then I sent my discharge from the service and some recommendations I had in the military.

Then the next day or the day after, I got a call from Mrs. Zegarek.

Q. From Mrs. Zegarek? A. Yes.

She said Morris would like to see me.

So we arranged a time. I believe it was about the third week of March that I went down.

I told him I would be able to start work about the 15th of April.

He said, "Well, that's a little late. It would be better if you could start sooner."

So I said, "I will try to be able to come down by the 8th of April."

He said, "That will be fine."

Q. What position were you talking about? A. We were talking about the position as a mechanic.

At that time, we wrote up a list describing various pay raises and increments that I would work on, how I would work through assembly, through setup, and then be a full mechanic.

* * * *

He also explained his 3-2 formula in which he told me
326 that because of the seasonal nature of the motorcycle business, most shops have a tendency to lay people off in the off season.

However, he said that "I have devised something unique in the business and I call it my 3-2 formula. What this does is that every three hours you work in the peak season, you're guaranteed two hours of employment in the off season.

* * * *

Q. What was your salary when you started? A. \$2.25 an hour.

Q. What was your salary when you started? A. \$2.25 an hour.

Q. And your position was? A. A mechanic, but an assembly mechanic.

Q. Did your position change? A. Yes.

From assembly I went into the setups, and then from setups I went into being a regular mechanic.

Q. And that was what you were at the termination of your employment, was a regular mechanic? As. Well, yes and no.

Q. Could you explain that, please? A. I'll try.

It seemed that as you worked up through the shop, whenever Morris got made at you, he would put you back in assembly.

So my last week of employment, I was in assembly again after we came back from the strike or walkout.

Q. Well, is assembly part of the shop? A. Well, it's in a different area. It's in the back, but it could be considered part of service.

Q. Did you receive any pay raises? A. Yes, I did.

Q. Tell us about that. A. I received two pay raises. I went from two -- no, three.

I went from \$2.25 to \$2.50 to \$2.75 and then to \$3.00 as per arranged.

327

I received two pay raises.

* * * * *

I went from \$2.25 to \$2.50 to \$2.75 and then to \$3.00 as per arranged.

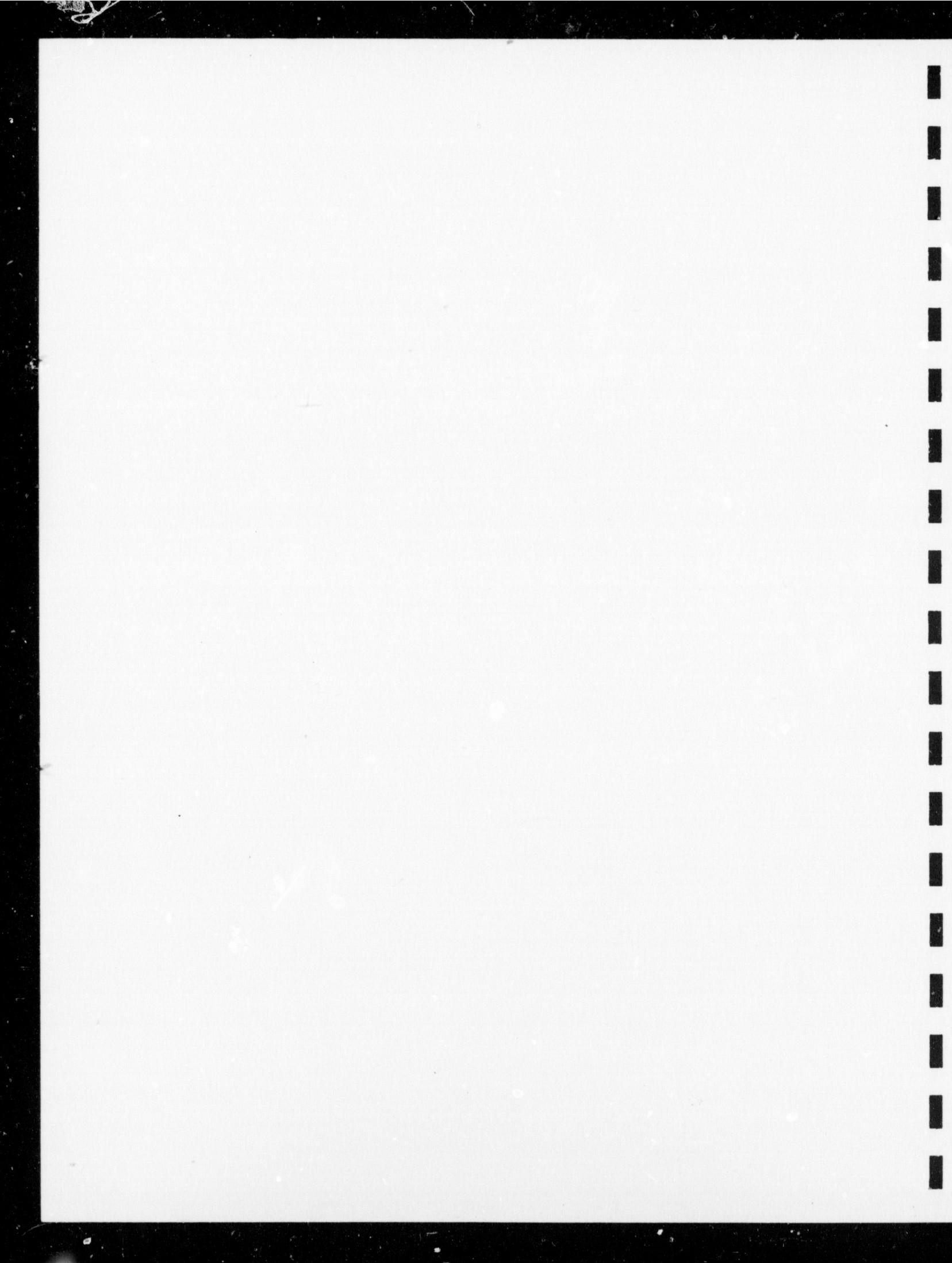
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328

Q. And what were your hours? A. My hours were 9:00 to 6:00 Monday through Saturday and 9:00 to 9:00 Monday through Thursday.

However, when I started, it was explained to me that the evening hours were optional, that it would be to my advantage to work those evening hours, and put in as many hours as I could in the summer so that I would build up my hours for the 3-2 formula, and be able to work more hours in the winter.

* * * * *



330

Q. I see.

Would you describe the T. V. cameras that were installed in the shop? A. Yes.

331

There was one in the shop with a wide angle lens that could pick up the whole shop area.

There was also one in assembly that its field of vision would pick up the whole assembly area.

There was no light on the camera that you could ever tell when they were on, to the best of my knowledge. They could have been on all the time.

Q. When they're on, what do they do? A. They --

Q. Is there a place where you can see the -- A. No, you can't see yourself.

The monitors were stationed at the cash register where Mr. Zegarek normally was.

Q. And what did the monitors do?

Did they pick up a picture or a voice? A. They picked up the picture.

There were separate microphones for the voice.

The microphones, once again, there was no button or anything to push. As far as I know, they were on all of the time. There was no way we could shut them off from inside the shop. There was no way -- you didn't have to signal from the shop --

MR. POLLACK: Move to strike as far as he knows.

There's no basis for this.

THE WITNESS: Okay.

JUDGE WELLES: Do you want to develop it?

332

MS. JOHNSON: Yes.

By MS. JOHNSON:

Q. Did you observe the operation of these cameras?

A. Yes, I did.

We made a test one day after the cameras were installed. I was in the shop. Mr. Zegarek was at the cash register says where the monitors were.

I kept trying to talk to him by pressing the button. He kept telling me -- he kept sending somebody in and saying, "Stu, don't press the button. I can't hear you when you press the button, you don't have to press the button to talk."

Q. So that when you were conversing in the shop without the button being pushed, then he could hear you; is that right?

MR. POLLACK: Objection.

That's obviously a conclusion.

JUDGE WELLES: It's a conclusion.

Sustained.

MS. JOHNSON: All right.

By MS. JOHNSON:

Q. From your test of this device, what was necessary in order to communicate from the shop to the front desk? A. There was nothing necessary. All you had to do was talk.

Q. I see.

333

Who told you about the union meeting? A. Many people. Glenn told me, Dario told me, Bob Siegfried.

* * * *

Glenn was walking around telling everybody about the meeting. One time while he was talking to me, Philip walked by behind him. That's all.

* * * *

334 MS. JOHNSON: Your Honor, I would propose -- off the record the parties discussed a stipulation with respect to the authenticity of the cards which are contained in General Counsel's Exhibits 2-A through 2-K.

Would you so stipulate as to the authenticity of these cards?

MR. POLLACK: Yes.

MS. Johnson: I will so stipulate.

JUDGE WELLES: The stipulation is received.

Please proceed.

* * * *

337 BY MS. JOHNSON:

Q. Go ahead. A. And Mr. Scott said, "Well, we really don't know very much about the motorcycle business. This is the first motorcycle shop that we're involved with. Our shops are mainly automotive and oil delivery shops."

338 And then Mr. Zegarek explained about the seasonal nature of his business.

* * * *

Q. Please relate that to us, as best as you can recall.
A. Mr. Scott said, "What about Glenn?"

Mr. Zegarek said that -- Mr. Scott said, "What about Glenn? We feel that Glenn was fired for union activities."

339 Mr. Zegarek said, "No, he wasn't. I've had a lot of trouble with Glenn. Glenn was always moving around. Glenn had ants in his pants and he was accident prone. He had at least 20 accidents since he's been here."

* * * *

Mr. Scott said, "Well, we feel he was fired for union activities."

Morris said, "Well, no, he wasn't." He said that Glenn had written graffiti all over the bathroom wall.

* * * *

340 The names that I did question were Harry Wachter, the parts manager; Mark Schmidt, the assistant parts manager, who Mr. Zegarek said really wasn't a manager.

But I said he was because Mark told me he got promoted to be a manager.

He said, "What do you mean?"

I said, "Well, Mark told me that he got promoted to be a manager and he had the right to hire and fire."

I said, "Is that a manager or is that not, if you have the right to hire and fire? He must be a manager."

So we weren't sure about that name. Mr. Zegarek said, "Well, who is there to hire and fire, there's only two people in the parts department at this time."

So I said again, I said, "Is he a manager or isn't he?"

Mr. Zegarek had no reply.

Mr. Scott said, "We will let the board decide."

He also had his wife's name on the list. I questioned that name. He had Philip Zegarek, his son, on the list, and I questioned that name, too.

He also had Meryl Zegarek's name on the list, his daughter, and I questioned that name.

However, at the time I didn't say it was his daughter,

I just said, "What about Meryl? She doesn't even work here. I have never seen her here except once or twice."

341 He said, "No, she works about 30 hours a week."

I said, "That's ridiculous because I've never seen her here."

That name was up in abeyance because the people from the union didn't know it was his daughter and I failed to mention it.

When we got to Richie's name, when I got to Richie's name, I had a question about that because he was only a part-timer, and part-time, from what I know, when I saw him, he was there full-time, but from my conversation with him, he told me he's only a high school kid and he's only working full-time for the summer.

When I got to Skip on the list, Skip said he was only -- I said, "Skip is only a high school kid, also, and he's only working in the summer."

There was really no concrete agreement made on those two names.

There were other names on the list that I saw that I didn't recognize. I really couldn't comment on those at that time other than the fact that I said that I don't recognize these names and I don't know who they are.

That about took care of the list.

Q. Was there any discussion about a petition? A. Beg pardon?

Q. Was there any discussion about a petition?

A. About a petition?

Q. Yes. A. I don't understand the question.

Q. Yes. A. I don't understand the question.

Q. A petition for an election, I mean. A. Yes, there was Mr. Shirk said he would file a petition for an election because Mr. Zegarek said he wants an election right away.

He said, "I want an election right away."

There was also a discussion about the back pay involved for the men who had been locked out.

* * * *

343 There was also one other thing that I recall that went on at the meeting.

I said, "I just want to get one thing off my chest for the fellows: This business about working nights is a little ridiculous," I say. "For a guy to get a night off, I mean, a guy is working 55 to 60 hours a week now, six days a week," I says, "For a guy to get a night off, he needs a notarized note from a doctor and a rabbi in order not to get the third degree."

* * * *

344 Mr. Zegarek said at the meeting that normally he begins laying people off on September 1st. He says he does this every year because of the seasonal nature of his business.

Mr. Scott said, "Well, what about the men? The men on strike, are they going to be laid off first?"

It was agreed that the men would be laid off by seniority, according to department.

* * * *

346 Q. Then what happened after than? A. We went back outside, myself, Mr. Shirk and Mr. Scott. We told the fellows that we'd be going back to work tomorrow.

We went to the Colonial Inn up the block and had lunch.

Q. Then what happened? A. At lunch John Steindel came in and signed a union pledge card.

* * * * *

Q. Did you go to work the next day? A. The next day we punched in, yes.

Q. I see. A. Well, the next day I punched in at about 9:00 o'clock. I was told by Skip, at about 11:00 o'clock, that Al had been let go, and that Steve had been let go.

I said, "Oh." I called the union.

* * * * *

348

Q. What happened after that? A. Then we went back to work.

The day finished rather uneventfully. I punched out at 6:00 o'clock.

The next day I punched into work. About 9:30 that morning Skip came up and he said that Tom wasn't with us any more.

Mr. Zegarek walked into the shop and I says, "Is Tom sick or something, Mr. Zegarek?"

He said, "No, Tom is not with us any more."

At that time he didn't say that. He said, "No, no, Tom is not here."

I said, "What, did he quit?"

He said, "No, I laid Tom off."

I said that 'I thought the agreement was that people would be laid off as of September 1st.'

* * * * *

He says, "By the way, Stu, can I see you up front?"
349 Up front was up front in the showroom. So I went
up front with Mr. Zegarek.

He said, "Stu, you're laid off."

I says, "Oh. As of when?"

And he said, "As of this evening."

* * * *

I might add at this point that about four or five
350 times that day, Mr. Zegarek came back to remind me that
this had nothing to do with what went on in the past and there
was no hard feelings and that even once he called me into the
office and he wanted me to write down my address so that if
he found any jobs he could get in touch with me.

Q. Did you work the next day? A. Yes, I did.

Later on in that day I asked Mr. Zegarek if I could
work on Saturday, being that the agreement was that we would
work through September 1st. He said that would be all right.

Q. I see.

Did you work that Saturday? A. Yes, I did.

* * * *

351 DAVID ISAACSON

called as a witness, having been first duly sworn by Judge
Welles, testified as follows:

DIRECT EXAMINATION

BY MR. POLLACK:

* * * *

Q. Mr. Isaacson, you are an attorney? A. That's
correct.

Q. Did you represent Honda of Mineola in or about August of 1974? A. That's correct.

352 Q. And in that capacity, were you present at a meeting with Honda -- with the Honda principals and the charging party herein on September 25th?

JUDGE WELLES: August.

MR. POLLACK: I apologize.

Q. On August 28th. A. Yes, I was.

* * * * *

353 Then I believe it was Mr. Zegarek who indicated that up until, I think it was August 26th or 27th, he had no knowledge that there were any union activities going on, that anybody had spoken to any of the employees.

* * * * *

354 I believe it was Mr. Lilker who indicated that this was in fact the fact, that Mr. Zegarek had no knowledge of any union activities going on, that he wasn't aware of it, that nobody spoke to either Mr. Zegarek or any of the other members of the Zegarek family, that other employees were endeavoring to have a union come in and represent them.

Q. Was there any discussion involved the word "secret"?

A. Not that I recall.

* * * * *

Well, I think the -- my best recollection is that either Mr. Shirk or Mr. Scott, in the course of the general discussion, asked Mr. Lilker whether the statements about Mr. Zegarek having no knowledge of the union's activities was true, no knowledge prior to the 27th -- the 26th or the 27th.

I believe he indicated to them that Mr. Zegarek knew

nothing about what had been going on with the union.

* * * *

355 Q. Was there any statement by either you or Mr. Zegarek with respect to the usual date on which layoffs commenced?

A. Yes.

Both Mr. Zegarek and myself emphasized to Mr. Shirk and Mr. Scott and Mr. Lilker that on or about September 1st was the usual day that it was the custom and practice in his business to start laying off people because of the cyclical nature of the motorcycle business.

* * * *

Both he emphasized and I emphasized that this was in fact the nature of the business and this had been going on for a good many years, for as long as I've represented Mr. Zegarek and for as long as he's been connected with the Honda of Mineola.

Both Mr. Scott and Mr. Shirk were aware, they said they had been in contact with various other motorcycle concerns and they were aware and they had knowledge --

* * * *

356 BY MR. POLLACK:

Q. Did there reach a point where there was an understanding reached with respect to the form that layoffs shall take? A. I wouldn't characterize it as an understanding.

I would say Mr. Zegarek indicated to Mr. Scott and Mr. Shirk that if it was at all feasibly possible that in the course of his laying off people in the various departments, they would be so laid off on a seniority basis, if that in fact was possible.

* * * *

357 Q. Was there any discussion in that meeting of a 3-2
ration or guarantee? A. Absolutely not.

* * * *

358 BY MS. JOHNSON:

Q. Again, if you would just say what Mr. Zegarek said
and what Mr. Lilker said, I would like to hear that conversa-
tion again. A. All right.

My best recollection is that Mr. Zegarek said that once
he was presented with the cards by Mr. Scott or Mr. Shirk,
that he had no knowledge that any of the employees had signed
up with the union, that up until the morning of the 26th or the
27th when this all came out, he said he didn't know what was
going on in the place there, he had no knowledge that any union
officials had spoken to any of his employees or that any of his
employees had signed cards.

I believe it was Mr. Lilker who indicated that he had
no knowledge of what was going on -- "he" meaning Mr. Zegarek --

* * * * *

359 But in the course of the conversation, it was stated
by Mr. Lilker that Morris knew nothing about what was going
on, whatever they did they did in the back quietly.

Whenever any of the Zegarek family came around,
then everything was hush, hush.

* * * * *

360 STEWART LILKER

called as a witness, having been previously sworn by Judge Welles,
resumed the stand and testified further as follows:

CROSS EXAMINATION

BY MR. POLLACK:

361 Q. Mr. Lilker, did you have your wife file a complaint
with O. S. H. A. concerning Honda of Mineola?

* * * *

A. No.

Q. You didn't? A. No.

Q. Did you know that your wife filed a complaint? A. Yes,
after she did it, she mentioned it to me.Q. Did you discuss the conditions in and about the place
in order to file the complaint? A. I certainly did.Q. With her? A. Well, I would come home every day
and mention the conditions in the shop.

* * * *

364 Q. Did there come a time, Mr. Lilker, when you talked
365 about the normal complement of employees that remained after
September 1st? A. At the meeting?

Q. Yes. A. Yes.

Q. And what was the normal complement that was dis-
cussed? A. Mr. Zegarek said it was normally, I believe, 10
to 12 people.Q. How many people were employed at approximately
that time, in your opinion?

You went over a list, I take it; right? A. Correct.

Q. And there were about 18 people, not counting super-
visors, approximately? A. Not counting supervisors?

Q. Yes. A. I don't know. I would have to see the list.

367

Q. At any rate, Mr. Lilker, when Mr. Zegarek said that his normal complement is 10 people, did you mention a 3 to 2 ratio? A. No, I did not.

Q. Tell me what you understood the 3 to 2 ratio to be, what your understanding of it was? A. My understanding?

Q. Yes. A. All right.

My understanding of the 3-2 formula was that for every three hours you worked in the peak season, you were guaranteed -- and I got a piece of paper that said that -- I was guaranteed two hours of employment in the slow season.

Q. Any understanding about how long you had to work in order to be eligible for that ratio or for that formula? A. No, sir.

When I came down for the job, no mention was ever made to me in that respect.

Q. So as far as you knew, everybody that worked in the peak season was guaranteed employment in the slow season; correct? A. Correct.

Q. But you didn't say anything in the meeting on the 28th in that regard, did you? A. No.

368

Q. And when you talked about layoffs, it didn't dawn on you how could people be laid off if they were guaranteed employment?

A. That's correct, it slipped my mind.

Q. Mr. Zegarek ever mention to you that in order to be eligible for guaranteed employment, you had to have 12 months of employment prior to the slow period? A. No, sir.

Q. Never did? A. No, sir.

Q. Never said to you that if you didn't have 12 months of employment but if you worked, you would be guaranteed a particular amount of hours in each week? A. No, sir.

369 Q. Never mentioned that he did this in order to prevent the loss of unemployment insurance to the employees that were on layoff? A. No, sir.

Q. Never had that discussion with you? A. No, sir.

Q. Not even at the beginning? A. No, sir.

Q. Did you ever see any notations or memoranda on the walls concerning an explanation -- concerning this 3 to 2 formula or ratio? A. I might have seen one.

However, I really read it fast and it was in the beginning of my employment.

All I can say is what it said in effect. And in effect, it said that --

Q. All right. Excuse me, I'm not really interested in your interpretation. A. Okay.

Q. There was a memo posted concerning the ratio, or the guarantee, this 3 to 2 proposition; correct? A. Concerning it, right.

Q. And you saw that? A. I saw it, yes.

Q. And do you have any idea how long that memo remained posted?

370 A. No.

I don't even have any idea how long it was there.

Q. Were you ever asked to sign a pledge about the hours that you would work? A. No, sir.

Q. Are you aware of employees being asked to sign a pledge? A. No, sir.

* * * *

Q. Well, had you worked on motorcycles? A. Yes, I had.

Q. On a regular basis? A. What do you mean by "regular"?

MS. JOHNSON: Objection, your Honor.

I don't understand the relevance of this line of inquiry.

JUDGE WELLES: Mr. Pollack, I don't quite understand the relevance, either.

MR. POLLACK: Your Honor, it goes to the area of the attitude of this employee as it concerns his employer, as that attitude was manifested around the discussion of the freezing of the salary.

JUDGE WELLES: Well, what is your contention going to be?

371 MR. POLLACK: My contention is that this employee is extremely hostile, more hostile than a normal, regular employee.

JUDGE WELLES: In terms of credibility or in terms of the basis for his discharge?

* * * *

373

RECROSS-EXAMINATION

BY MR. POLLACK:

* * * *

374

Q. Okay.

Would you tell us the sum and substance of that conversation, what you said to him and what he said to you? A. Sure.

I said, "Mr. Zegarek, I have a question about this 3-2 formula thing."

And he said, "Come up front."

He said he would explain it to me up there.

So we went up to the front part of the showroom.

We sat down in these little school desks. He said, "The way the 3-2 formula" -- he gave me an example. He said, "Let's say, for instance, you work 67 hours a week."

He says, "If you work 67 hours a week in a peak season, that means you would be guaranteed 42 hours a week if you wanted to work in the off season."

I also questioned -- that's all he said. I never mentioned anything about this "not applicable" other than the fact that he said, "Well, some people haven't kept their pledges and that's why certain benefits that the employees were to receive, they're not getting them."

375

Q. Mr. Lilker, that conversation took place upon your receipt of the document which is in front of you, which is General Counsel's Exhibit 7? A. Yes.

* * * *

379

Q. And what about the words, "Your pledge," was that

completed? A. I don't recall.

* * * * *

THOMAS HOWARD DODGE

called as a witness, was first duly sworn by Judge Welles and testified as follows:

DIRECT EXAMINATION

BY MS. JOHNSON:

* * * * *

380 Q. What position were you hired for? A. As a salesman.

Q. What was your salary when you started? A. \$2 an hour.

Q. Did you receive any raises? A. Yes, I did.
I received one to \$2.50 an hour.

Q. And when did you receive that, if you can recall?
A. About two weeks later.

Q. Two weeks after you started? A. Right.

* * * * *

381 Q. You mentioned that you installed the television system.

A. Yes.

Q. Are you familiar with its operation, the operation of the television system? A. Yes.

Q. Would you tell us about that? A. Yes.
The system had two cameras and two televisions, whatever. There was also, I believe, two mikes installed in the shop.

MR. POLLACK: Could I just have that last one?

THE WITNESS: Two mikes installed in the shop.

Q. Where were the cameras installed? A. One was in the major part of the stock where all of the regular mechanics were.

There was another one in the back assembly area,

pointing towards that area.

Q. How did these cameras operate, if you know?

382 A. Electrically. They were just --

Q. What did they do? A. They were stationary. They didn't move or anything. One was a wide-angle lens, the one in the shop.

The other one in the assembly area, I don't think it was a wide-angle lens. They were on usually most of the time.

Q. Was there a monitor? A. What do you mean?

Q. Was there a place where the pictures from the back of the shop were shown? A. Yes.

Q. Where was that? A. Right near the front showroom cash register, they were both mounted there together.

Q. Did you observe the operation of the cameras? A. Yes.

Q. Would you tell us about that? A. Well, all they did was they observed all of the employees in the back area.

Q. What did the microphones do? A. They were just installed to, I guess, monitor whatever was going on in the back.

MR. POLLACK: Monitor what?

THE WITNESS: Whatever was going on in the back as far as sound.

383

* * * *

Q. What were you told about the 3-2 formula, by whom and when? A. Well, I believe I was told about it at a large sales meeting.

I further inquired into it. I talked to Phil, I believe.

I asked him, "What happens in the winter? Obviously the season is going to drift off a little bit."

384

He said, "Oh, there's plenty of work. We'll find you something to do. We'll have you work on displays or in-mail order because mail order -- we have that catalogue that goes out all over the country and the world. It is always bringing in business even in the wintertime."

* * * *

Q. Who told you about the union meeting? A. Glenn did. He came up from -- I was in the front showroom. He came up front and said, "Oh, we have a meeting."

At that time I believe Phil or Mr. Zegarek came by and he said, "I'll catch you later." And he walked by. And then I saw him in parts later on that day and he described to me about a union meeting which was set for Friday.

Q. And you attended the union meeting? A. Yes, I did.

* * * *

385

Q. What happened after that? A. Well, I worked a normal day. Towards the end of the day, Mr. Zegarek approached me and said, "I'd like to speak with you later on, sometime before you leave this evening."

Before I left that evening, I went in. He approached me and told me that due to seasonality of his business, he's going to have to let me go and that he has no harsh feelings, it has nothing to do with what has just happened with the union at all, and that he would consider hiring me back in February and he said that I should take advantage of this long weekend upcoming, and leave early.

Q. Did you say anything? A. No.

I was just overwhelmed by the situation. I didn't

know how to react. I didn't ask any questions.

I just said, "I enjoyed working for you."

I said, "I'll leave."

Q. Who was your boss? A. I had a few.

Mr. Zegarek, Phil Zegarek, Mrs. Zegarek.

* * * *

387 Q. Isn't it a fact that in order for you to hear something over that monitor, that the person on the other end was literally shouting at you? A. Not shouting, no.

Q. Talking loudly? A. Loudly, yes.

388 Q. Above ordinary conversational pitch? A. Well, if you were within maybe three feet of the area, ordinary voice level would be loud enough.

Q. That's three feet of the camera? A. Of the -- no, of the microphone.

* * * *

Q. The person speaking had to be within three feet of the microphone; is that what you're saying? A. About that, yes.

* * * *

390 Q. Just so that the record will be absolutely clear, you referred to Mr. Zegarek saying to you, the night of your layoff or termination, "Take advantage of the long weekend."

A. Yes.

Q. Was that in fact the Labor Day weekend that he was referring to? A. Yes.

Q. And by leaving Friday night, you had Saturday, Sunday and Monday off.

391 A. Yes.

* * * *

392

REDIRECT EXAMINATION

BY MS. JOHNSON:

Q. Mr. Dodge, on Friday, August 23rd, were you present for a conversation between Glenn Musano and Harry Wachter?

A. When Glenn was laid off?

Q. Yes.

Would you tell us what was said and by whom during that conversation?

MR. POLLACK: Your Honor, is this witness being offered to impeach any prior witness of the Government, or is it going to be --

MS. JOHNSON: It's cumulative.

MR. POLLACK: If it's cumulative, I'll stipulate that if this witness, if called upon, would testify to the same effect concerning the Harry Wachter conversation as did your previous witness.

MS. JOHNSON: Fine.

JUDGE WELLES: Is that satisfactory?

MS. JOHNSON: Yes, it is.

JUDGE WELLES: All right.

The stipulation is received.

* * * *

394

KENNETH C. RUPPEL

called as a witness, having been previously sworn by Judge Welles, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MS. JOHNSON:

Q. Mr. Ruppel, when you worked at Honda, were you ever late? A. Yes, I was.

Q. Do you remember when it was? A. I can't recall the exact date, but there were one or two times I was late.

Q. What happened when you were late? A. What happened?

Q. Yes. A. I just came in and started work as normal.

Q. Had you called? A. No, I had not.

Q. Do you recall how late it was when you came in?

A. There was one day I did not come in at all and did not call.

MR. POLLACK: I didn't hear that answer, your Honor.

"There was one day" --

JUDGE WELLES: He didn't come in at all.

MR. POLLACK: Are you contending that's a lateness? I'm sorry.

May we be off the record?

JUDGE WELLES: Yes.

Off the record.

(Discussion off the record.)

JUDGE WELLES: Back on the record.

BY MS. JOHNSON:

Q. What happened on that day? A. When I came in, one of my fellow employees suggested to me that it would be a good idea to call if I was late again.

Q. And you continued working at Honda? A. Yes.

Q. All right.

* * * * *

BY MR. POLLACK:

Q. And after that suggestion, were you ever late again? A. Not that I can recall.

* * * * *

396

MS. JOHNSON: General Counsel rests at this point.

* * * * *

THEODORE E. PORT

* * * * *

397

Q. Did you have any conversations with Mr. Zegarek concerning the union or a union or any union, exclusive of today? A. No.

Q. Did you play any role in the discharge of Glenn Musano? A. None whatsoever.

Q. Did you work with Glenn Musano? A. Insofar as he was a member of the parts department, yes. He may have pulled some mail orders and things like that relating to my department.

398

* * * * *

JUDGE WELLES: Do I take it correctly that there is no question but that Mr. Port is a supervisor?

MR. POLLACK: That is -- there is no question but that he is cloaked with supervisory authority and would, therefore, not be in a unit if an election were directed.

* * * * *

399

MR. POLLACK: It is hereby stipulated and agreed that the four Zegareks, namely, Morris, Philip, Shirley and Meryl, would not be included in an appropriate unit.

JUDGE WELLES: So stipulated?

MS. JOHNSON: I so stipulate.

* * * * *

MORRIS ZEGAREK

called as a witness, having been first duly sworn by Judge Welles, testified as follows:

DIRECT EXAMINATION
BY MR. POLLACK.

400 Q. How many years have you been personally engaged in the motorcycle business? A. Approximately 10.

Q. And is that the business in which Honda of Mineola operations? A. Yes.

401 For the past 10 years, the cycle is generally with a February startup peaking somewhere in the area of about June, levelling off in July, lowering in August and dipping considerably in September.

I'm speaking about total sales.

Sometime in early September of sooner, we generally lay off between one-third and 40 per cent of our personnel.

Q. Do you in any way solicit or request employees who had worked for you previously to return to work? A. No.

402 Q. In terms of sales volume, would you consider 1971 a typical or average year? A. Yes.

BY MR. POLLACK:

Q. Mr. Zegarek, I show you Respondent's Exhibit 5 for Identification, and ask you if you can tell me what this is.

(Handing.)

A. It's a photograph that shows the physical volume and sales

volume as it is directly in proportion to manpower requirements.

It covers the periods of January through December
for the --

Q. For what year? A. For the year 1971.

Q. And did you prepare that photograph? A. Yes, I
did.

403 Q. And I ask you again, is 1971, in your opinion, Mr.
Zegarek, a typical or average year? A. Yes, it is.

MR. POLLACK: I offer the document.

JUDGE WELLES: Any objection?

MS. JOHNSON: I object to the introduction of the docu-
ment. It has no bearing on the time in question. It occurred
prior to the oil shortage. It has no relevance to this proceeding.

We're concerned with the figures for 1974.

JUDGE WELLES: Was that prepared by you specifically
for this case or was it prepared at the time?

THE WITNESS: It was prepared for the case from our
books and records.

JUDGE WELLES: Yes.

I'll receive it in evidence.

* * * *

404 Q. Mr. Zegarek, did you have an employee named David
Kocivar? A. Yes, I did.

Q. Who interviewed this employee? A. The initial
interview was under my request by Mrs. Zegarek.

Q. And at the time of the initial interview, did the employee
fill out an employment application? A. Yes, he does.

Q. I show you what has been marked as Respondent's
Exhibit 6 for identification, and ask you if the employee filled

out?

(Handing.)

A. Yes.

* * * *

405

VOIR DIRE EXAMINATION

BY MS. JOHNSON:

Q. Do you know who filled out the document? A. This document (indicating)?

Q. Yes. A. Yes.

Q. Who did? A. David did.

Q. David Kocivar? A. Yes.

Q. Do you know when this was written in (indicating)?

A. That was written in in conjunction with an interview, as done with each employee.

Q. Do you know who did it? A. The personnel in the office.

* * * *

Q. He's referring to a position with the words "Sales mgt" on the application.

Are there any other parts that Mr. Kocivar didn't fill out? A. Yes; the notes.

21 years old, one-30 interview, hired, sold cameras, has sales experience, has knowledge of bikes, owns a 350 Honda, starts Saturday at 9:00 a.m.

406 Q. What about this (indicating)? A. Two-week trial period.

Q. And the salary? A. And the salary.

This is done in conjunction with interviewing him.

Q. And you believe it was done by Mrs. Zegarek? A. I believe so, or Phil Zegarek, my son.

* * * *

JUDGE WELLES: Then you are alleging that he is not an employee within the meaning of the act?

MR. POLLACK: Within the meaning of the act, that's correct.

MS. JOHNSON: I would object to the introduction of
405 this document.

There is no indication that the individual was informed as to this writing on his application saying that he's in sales management; there's no indication as to when it was done, by whom or that it was in any way communicated to him.

JUDGE WELLES: Well, I'll accept it for what it is worth.

* * * * *

Q. Did there come a time in your relationship with this individual that you had a conversation with him where the result of that conversation was to raise his increase to three -- was to raise his salary to \$3 an hour? A. Yes, sir.

Q. Would you now tell us about that conversation as best as you can recall, telling us what you said to him and what he said to you? A. As a result of a discussion with Phil Zegarek as to the performance of Dave, I made a decision to further his management training by planning ahead his schooling, periodic raises in pay and getting him encompassed in more phases of the business, getting him deeper into it as times goes on.

* * * * *

A. (Continuing) At that time I ordered an immediate increase of, I believe at the time, 25 cents an hour, to be followed by an addition 25 cents an hour.

As a result of that increase when Dave got his notice

of the first increase, he approached me and asked me if it would be possible for me to accelerate the second increase to that time or retroactive the week -- I don't remember the exact date.

Of course, at the time I told him that I would be happy to.

Q. Did you? A. Yes.

* * * *

407 -- along with that given more responsibility.

Q. Excuse me.

Is that what you told him? A. Yes, yes.

Q. Tell us what you told him, not the conclusion. A. Right.

I told him that he is to be responsible for the people in the sales end.

At that time it consisted of three or four personnel. One of them was Mr. Dodge, Skip, Richie and possibly one other party that was involved in sales at the time.

That they were to directly report to him, that they were to take orders from him directly, that he was to assign their work on a daily basis, that if there are any complaints about their work that he is to report to me directly or to Phil directly, that he has the right to recommend that they be kept or let go based on their performance and other functions around the showroom that normally were borne by myself or Phil.

* * * *

408 Q. Did you discuss the use of the cash register? A. Yes.

That was the next step.

Q. Was that a part of that conversation? A. Yes, that's right.

Along with that we engaged him in the use of the cash register, taught him how to use the cash register, taught him how the cash register related to sales invoices, machine invoices, mail-order invoices and other areas that the cash register is used for.

* * * * *

A. (Continuing) And he took on the responsibilities.

Q. Did there ever come a time when he in fact did report to you that he was not satisfied with an employee? A. Yes.

* * * * *

409

Kocivar was at the time in this one complaint, the initial complaint was that Dodge was not taking the orders from him and not following his directions with regard to certain tasks around the showroom.

And at that time I spoke to Dodge and explained to him that his orders are to come directly from him and that he's to take the orders from him.

* * * * *

410

Q. Did you inquire of any other employees about what Dodge wasn't doing? A. No.

* * * * *

Q. Well, what did you do with Dodge? A. I told Dodge in no uncertain terms that he is to take his direction from Kocivar.

Q. Did you make any independent investigation of the complaint? A. No.

* * * * *

411 Q. Were there any other occasions when you told other employees or Dodge again that Dave was in charge? A. Dodge on several occasions, Skip Dowling on several occasions, Richie on several occasions.

MS. JOHNSON: What did you say?

Can we have the conversation?

THE WITNESS: Well, the complaint from Dave was that Skip was fooling around too much in the back.

Then I spoke to Skip and I told him that he is to spend his time in the front and when he has nothing to do, to report to Dave....

* * * *

Richie had to answer to him.

BY MR. POLLACK:

Q. Is that what you told Richie? A. Yes.

412 Q. Now, you've heard much discussion about a 3 to 2 guarantee, or ratio. A. Yes.

Q. Would you describe for us -- strike that.

Is there a company policy of 3 to 2? A. Yes.

Q. Would you describe, as fully and completely as you can, what is the company's policy with respect to 3 to 2? A. Due to the inherent nature of the motorcycle business and the limited space that we operate within in season, the sales, service, parts and our other areas require to perform at such a heavy rate in season that unless we get this additional time with our trained personnel and with all of our personnel, we can't reap or take all of the business in during those few short months, which is three or four months.

In order to induce our help to put this extra work

and effort in, we came up with the formula that we call the 3 to 2 formula, which is a formula that is simplified if you take it by ourselves.

If an employee, a regular employee, works 60 hours a week, average, during the in-season period, during the off-season period we will guarantee to him 40 hours of employment during the time that we have work for him.

Now, our general staff consists of about 10 to 15
413 personnel in off season,....

* * * * *

Q. How does the ratio apply to a permanent employee and what is a permanent employee? A. A permanent employee is an employee that's been employed 12 months or over by your company.

In his case, the employment is guaranteed during the off season, during the winter seasons, because it falls within the scope of the amount of people we would need within the off-season period.

It, also, guarantees him the hours that he would be looking for for 50 or 52 weeks a year.

Q. Am I correct then in stating that for an employee who has 12 months of seniority at the beginning of the off-season, he is guaranteed 50 or 52 weeks of employment? A. Yes.

Q. Now, tell us again what the policy is with respect to employees who have less than 12 months' seniority during the slack season? A. The policy is if they are laid off on September 1st., or sooner, that if the business cycle so dictates that we need their services between the September 1st

period and the March period of the following year and if we should call them and ask them if they are available to be employed, the amount of hours would be applicable to them for the time that they are employed -- it could be one week, two weeks, three weeks, four weeks or whatever the time is that we could use them.

Q. Does that guarantee them a week's work if they are recalled to work as opposed to a day's work? A. It guarantees them a week's work.

Q. In what amount? A. Based on the 3-2 formula.

Q. In January of this and other years, Mr. Zegarek, did you have the employees who were then employed sign pledges? A. Yes.

* * * * *

415 Q. So that you asked at least for a moral pledge from your employees that they would put in the extraordinary hours during the in-season period? A. Yes.

* * * * *

Q. Now, when new employees were hired at the beginning of the season or throughout the in-season period, did you request any of them to sign this pledge? A. No.

Q. Now, have you had this 3 to 2 guarantee or formula in effect for years? A. Yes.

Q. In the past, in 1973, did you have a seasonal layoff?

A. Yes.

Q. Approximately when did the seasonal layoff take place?

416 A. Sometime about August or September.

* * * * *

Q. You say approximately one-third? A. Approximately one-third, yes.

Q. And let's take 1972, did the same situation occur?

A. Yes.

Q. Now, were people who had less than 12 months of seniority by the layoff date, laid off?

* * * *

Q. Let's take 1972 and work forward. A. Yes.

Q. In 1973?

417 A. Yes.

* * * *

Q. What about in 1973, were employees who had less than 12 months layoff in the slow period of 1973? A. Yes.

Q. What about employees who had more than 12 months in 1972, were they laid off? A. No.

* * * *

419 Q. I ask you now to read for us, Mr. Zegarek, from Respondent's Exhibit 8, this sentence (indicating).

420 Read it aloud. A. "Continuing employment will be based on seniority, productivity, aptitude and general attitude."

Q. And what is the date of that notice? A. July 23, 1974.

* * * *

422 Q. Up until Monday, August 26th, did you have any knowledge at all concerning union activities, union solicitation, union meetings or any unionization of your employees? A. No.

Q. What was your first knowledge? A. My first knowledge was the Monday that Dave Shirk, Mr. Shirk and his associated walked in.

* * * *

423

Q. Would you describe for us the nature of your conversation whereby you discharged him? A. Yes.

* * * *

Q. Tell us where it took place, when it took place, who was there and what was said. A. The decision to let Glenn go was made actually a week prior.

I debated as to his liability. I looked over his records as to how he was doing his work, his performance, his lateness, his absenteeism.

I discussed it with Harry Wachter and I also discussed it with Phil.

I made the decision a week prior. Harry Wachter told me to hold off a few days and let him think about it.

In respect to him, I let it go for two or three days. But came Wednesday, Harry Wachter agreed with me that his performance was not good enough to keep him on the job, according to the record, continually getting into accidents, almost killing me on two occasions on a ladder and finally ending up in a hospital himself.

Prior to that, there was continual dropping of boxes. Apparently his sight is a problem and he just doesn't see where he's working.

* * * *

I personally witnessed him dropping boxes and running into him.

Q. Keep going. A. Continually late, not taking orders, not following directions.

* * * *

425

Q. Trying to clean up the language, just tell us, if you

can, what you said to him first? A. I said to him if he wants more details to check with the office next week and details would be given to him, with records.

Q. Did he ask you why he was discharged? A. He did.

Q. Did you give him any answer other than -- A. Yes.

426 Q. What did you give him? A. Incompetence.

Q. Did he say anything with respect to the incompetence?

A. General profanity.

Q. At the time of his discharge, did you have any knowledge at all as to any union campaign? A. Absolutely not.

Q. Did he mention the word "union" to you? A. No.

Q. Did you mention the word "union" to -- A. No.

Q. -- him? A. No.

Q. I see.

* * * * *

427 In many cases the machines were operable, they could use them, the service was not imperative, so we'd rather not inconvenience the customers, so we had them pick them up.

* * * * *

Q. I show you Respondent's Exhibit 2....A. Yes, I do.

* * * * *

A. David Kocivar's.

Q. Now, I showed you certain words before.

Would you tell us what the words stand for, what the....

* * * * *

428 A. S-a-l-e-s.

* * * * *

A. Mgt., which is an abbreviation for management.

* * * * *

Q. I now show you Respondent's Exhibit 4, which is Mr. Antonson's card.

I ask you to look at the word which is spelled T-e-m-p,

* * * *

It means that he was hired for a specific amount of week or days, and that he would be severed after that date.

* * * *

427 Q. And did you, in August of 1974, have any employees enrolled in that program?

* * * *

Q. Would you tell us who? A. David Baldasarra.

* * * *

428 Q. That's David Baldasarra? A. Yes.

* * * *

Q. I show you the payroll ledger card and ask you if it, in effect, has a designation on it that he was in the vet program? A. Yes, it does.

Q. Now, are you permitted, Mr. Zegarek, to put anybody you want into that program? A. No.

* * * *

429 Q. Could you describe for us what occurred concerning his termination? A. Yes.

* * * *

430 At that time, it was in conflict with the hours that he had to work because the other employee was not working the same hours he was.

As a result of that, I agreed to, until such time as his car became available, only work one night a week instead of the normal two nights that he was needed, you know, to have coverage for our sales organization and our service organization.

Shortly following that, he either became sick or did not want to work the second night or said he had a commitment one week and we let that go by, I believe at the time, and then it came to a point where he said he just couldn't work any nights at all.

I called him into the office, I think it was a Thursday or a Friday of that week, and I explained to Bob that as much as I'd like to sympathize with the problem and help him with the problem, the company does require certain personnel to be on hand at night for our customer service, otherwise we just can't service or maintain our business.

When he was originally hired, it was with that understanding, I told him, and he had continually put in the nights and that I would definitely require a continuing of night work.

431
I, also, told him that as a result of our meeting with Mr. Shirk and Scott, that they at that time suggested to me that possibly you could, in these cases, you know, where there is that hardship, start the man a little later in the day.

I picked it up and thought it was a good idea. I presented it to him and told him that possibly if he started at 10:00 o'clock, 12:00 o'clock, a convenient time to both of us, and worked that night, it would fill our needs and somebody could put in for him in the morning, take over where he was needed in the morning.

In response to that, he said he would think about it. I told him not to make a decision right away but go home and think about it and let me know in the morning because I definitely needed the coverage at night.

The next day he reported to work and I think it was early in the day, and I asked him what the decision was and he said he definitely will not work nights.

I told him along with that type of a demand, I just could not keep many employees because it was not in line with our needs.

He was let go as of that day or the following day.

Q. Not to gild the lily, but did you fire him then? A. Yes.

432 Q. Did there come a time when you terminated Albert Antonson? A. Albert Antonson is a college student, a full-time college student, who was hired for a summer job.

Q. Did you ever, at any time, Mr. Zegarek, authorize anyone or say directly to him that he could be worked -- that he could work part-time while he went to school? A. No.

* * * *

Q. Did anyone ask you if Antonson could be continued in employment after the temporary period -- A. Not to my knowledge.

Q. -- on a part-time basis? A. No, not to my knowledge.

Q. And so Antonson was terminated because his period of employment ended? A. That's right.

It was in line with the school starting.

Q. Did there come a time when you terminated the services of Steven Dyroff? A. Yes.

* * * *

433 He, actually, left on his own. He never came back and went to work for his uncle. That was it.

* * * *

A. On or about September 1st, several days, before, which was a Labor Day weekend, I advised Tom that our season has ended, our sales volume will drop drastically in the oncoming weeks and months, and there is just no room for anyone in sales in his position.

Q. Did you mention --

434 A. In line -- in line, I told him, with a discussion I had had with Mr. Shirk and Scott in our office on the early part of the week by seniority.

Q. In any particular way? By seniority in any fashion?

A. In seniority by division or by department, by working.

Q. What about Stewart Lilker? A. Stewart Lilker, again, was let go in line with our layoff period, which was the September 1st layoff.

Q. What did you say to him at the time of his layoff?

A. I told him that I would certainly recommend him in subsequent employment that he should ever get involved in, that it's just a business situation that we just don't have enough room for that many employees.

Q. Dario Ardito?

Incidentally -- strike that.

With Lilker, do you recall if you mentioned anything

concerning the seniority -- the departmental seniority? A.
I believe I did.

Q. All right.

Dario Ardito? A. Dario Ardito -- well, with Dario Ardito, it was a situation where he was our warranty man and we had, at that point, closed our warranty division, you know, putting it into the office to be handled as a bookkeeping procedure. We had no need for his services.

435

Q. Is that what you told Mr. Ardito? A. Yes.

* * * * *

A. Ardito was in charge of taking the service invoice, copying it over to the warrant service invoice, attending to the parts, being responsible for the holding of the parts and ultimately the sending of the warranty to the factory.

* * * * *

436

Q. And David Kocivar? A. Yes.

Kocivar was a man that I had called into my office, I think it was Thursday or Friday of that week, and explained to him that we're at that time of the year where continuing employment would be based at what role he's going to play in the organization.

I also explained to him that in order to continue his management and management training, he would now have to be sent to Honda schools in town or out of town for periods of one week to two weeks possibly.

We, in turn, in conjunction with American Honda, would be continuing his management training under a program that they have outlined and recommended.

I told him under this type of an arrangement, he would have to be part of the organization, he would have to represent us, he would have to look out for our affairs.

Of course, he would have to continue the ten continuing management of the personnel in sales and possibly our putting him into other areas of our organization, possibly into mail order and possibly into some other areas of management to take some of the pressure off myself, Phil or some of the other people in management.

Q. Did he respond?

437

A. He told me he would have to make the decision overnight.

I highly recommended that he do it overnight, you know, rather than make a quick decision on it.

Q. Was that the end of the conversation of that day?

A. Yes.

Q. The next day, did any further conversation ensue?

A. Yes.

He had decided --

Q. Well, tell us, he came to you or you went to him?

A. No.

He came into work and I told him to meet me in the office. I asked him what his decision would be.

He told me that he has decided that he doesn't want the responsibility of management.

At that point, I advised him that we have no place or room for additional sales personnel inasmuch as our sales is going to dip drastically in the next three or four months.

We had to sever his employment at that point in time.

Q. Now, the employees that you terminated because of lack of work as opposed to their not agreeing with you on their job function, were they terminated in accordance with seniority?

438 A. Yes.

Q. Did you, in the making of the decision to terminate them, consider at all their union adherence? A. No.

* * * *

CROSS-EXAMINATION

BY MS. JOHNSON:

Q. Mr. Zegarek, in your testimony you referred to two employees, Richie and Skip, I believe, in sales. A. Yes.

Q. Could you tell me when they were hired? A. Skip was hired, I believe, last year. Richie sometime this year.

439 Q. Do you have any idea when this year? A. No.
I'd have to look at the cards.

The name is William Dowling in one of them.

William Dowling was hired sometime prior to 1/5/74.

* * * *

Q. After August 23rd, did you hire anybody in the parts department?

440 A. Yes, we did. We hired a warehouseman for inventory purposes.

* * * *

THE WITNESS: He was hired for four weeks, I believe.

* * * *

THE WITNESS: No, he's not employed by us any more.

* * * *

Q. Since August 23rd, are there any other hires in the parts department? A. Yes.

This week, I believe, we hired a man for inventory purposes.

* * * * *

441 Q. When was Ryan hired,....

* * * * *

A. 8/31.

* * * * *

A. John Ryan is not parts.

* * * * *

442 A. There was one man that was with us for about three or four weeks and then recently, within the last few days or last week, another man was hired for inventory purposes, for which I don't have a card here.

Q. You're referring to parts now? A. I'm referring to warehouse inventory.

* * * * *

Q. So since August 23rd, there have been two hires in the parts warehouse section; is that right? A. No.

They were not hired in the parts warehouse, they were hired for inventory of parts, for a specific function.

We're in the process of taking our yearly inventory.

Q. One of those -- one of whom is still with you; is that correct? A. Yes.

Q. Now, take the service department, since August 23rd have there been any hires in the service department? A. Yes.

Q. Would you tell me who and when? A. Sure.

J. Wilner.

Q. When was he hired? A. 9/21/74.

Q. In the sales area, have you hired anybody? A. Since August 23rd?

Q. Yes. A. Yes.

Q. Who? A. We had one management trainee was with us approximately three weeks.

Q. When was he hired? A. I'll have to check.

Q. What was his name? A. I'd have to check his card. Mark L. Trantham.

Q. Mark Trantham was hired in sales? A. Yes.

444 Q. Was anyone else hired in sales? A. Subsequent --

Q. Excuse me.

When was Mark Trantham hired?

I don't think I got that. A. 9/14/74.

Q. Has anybody else been hired in sales since August 23rd?

A. Yes.

Subsequent to him leaving, Richard Saunders.

Q. Any other new hires in sales? A. No.

Q. Anybody hired in assembly or any other people in service?

I guess you said J. Wilner, and I didn't ask you if there are any others. A. I have others.

Q. Are there any others in service? A. John D. O'Donnell.

Q. When was he hired? A. 9/21/74.

Q. Any more in service? A. Richard Janelli, partly maintenance and partly service.

Q. And when was he hired? A. 10/12.

Q. Any more in service.

445

A. That's it.

Q. Anyone hired in mail order since August 23rd? A.

Yes.

Q. Who? A. A Richard Schreck on 9/14. He left on 10/26.

Q. I just want to know when they were hired, if you have anybody else who was hired in mail order? A. Yes, subsequent to Schreck, Silverberg.

Q. Silverberg? A. Yes.

Q. When was he hired? A. 10/26.

* * * *

I think that that unless a witness is permitted to tell us which of these people left and a replacement hired for the leaving party, we're going to be awfully confused.

She has prevented this witness from answering that way.

JUDGE WELLES: I agree, you can't accumulate people in terms of making the point you're trying to make.

* * * *

446

Well, there is a part-time office girl that was hired that does some mail order. I think her name is -- if I can find it --

Q. Does she work in the mail order department or in the office? A. Her work is mainly office. It's a college student.

Q. When was she hired? A. I'd have to look it up.

9/21/74.

Q. Did you hire anyone in assembly, any other people in assembly? A. No, none other than the ones we've listed for you. No other new names.

Q. Would you repeat for me -- who -- well, maybe the reporter could read back who worked in the warehouse, in the warehouse parts section.

MR. POLLACK: You mean the newly hired?

MS. JOHNSON: Right.

JUDGE WELLES: That was way back.

MR. POLLACK: It didn't come out clear.

JUDGE WELLES: I don't think it did.

BY MS. JOHNSON:

Q. Please go ahead.

447

A. There were, to the best of my knowledge, two people hired between

* * * *

And recently, since he's left, a man was hired within the last week.

* * * *

JUDGE WELLES: And he was hired to replace Brian; is that correct?

THE WITNESS: Exactly.

JUDGE WELLES: All right.

* * * *

BY MS. JOHNSON:

Q. Searching your memory, were there any other people hired in sales that you can recall since August 23rd? A. I

think there was a high school boy that was hired....

* * * * *

448been with us for a couple of weeks.

Q. Would that be Barry Rifle? A. Yes.

Q. He worked, the records show, for -- how long did he work? A. He's working part time, not full time.

* * * * *

A. He's doing some of the construction work,

* * * * *

Q. Is the date of his hiring that which is on the card, 9/11/74?

449 A. 9/14/74.

Q. Excuse me. It says 11. A. Does it? I read it 14.

MR. POLLACK: It's 11.

Well, in we have a stipulation that the card shows that the work between 6 1/2 and 24 -- no, that isn't correct.

Strike that.

That's salary.

That he earned between 6 1/2 -- not less than six and a half dollars a week nor more than \$28.67 per week throughout his employment.

* * * * *

450 Q. So he averages between 12 and 15 hours a week? A.
I would say so, yes.

* * * * *

JUDGE WELLES: Back on the record.

Mr. Zegarek, you testified on direct examination that you do not solicit employees to return when they are laid off.

THE WITNESS: Yes.

JUDGE WELLES: Now, if that is so, how would your 3 and 2 policy apply to those people when you don't solicit them to come back?

That puzzles me.

THE WITNESS: It would be entirely up to them as to whether they want to present themselves for employment.

We welcome it;

* * * *

451

JUDGE WELLES: One other question.

Starting with September 1st, or thereabouts, did you stop being open at nights?

THE WITNESS: No; we're still open.

We're open two nights. However, we close certain departments one day a week. So what we do is that we give the employees the -- well, in many cases in some departments they're on a five-day week with some nights, or we give them, in some cases, an option either to work five days or six days at their own discretion.

It depends, of course, on our needs at the time, which is subject to change. But we're still open Monday and Thursday evenings.

* * * *

452

JUDGE WELLES: All right.

In prior years, '71, 2, 3, let's say, when you had layoffs, when did you notify the people who were going to be laid off for the slow season that they were going to be laid off?

THE WITNESS: August-September, in that area.

JUDGE WELLES: I mean how long before the actual last day of the employment?

THE WITNESS: Within a week.

JUDGE WELLES: Thank you.

Mr. Pollack.

REDIRECT EXAMINATION

BY MR. POLLACK:

Q. In the prior years, were there occasions when you notified them on the very same day of their layoff? A. Yes.

Q. Have you advertised for any employee since August 23, 1974? A. Yes, I have.

Q. And for what kind of employees have you advertised?

A. Sales management trainee, V.A. approved or not approved; mail-order clerk, V.A. approved or non-V.A. approved.

* * * *

Q. Now, you testified on direct examination that the person who you considered a management trainee was David Kocivar.

Is that correct? A. That's correct?

Q. Did you terminate him for lack of work or were you of the opinion that he self-terminated? A. He self-terminated.

Q. Now, did you terminate Thomas Dodge for lack of work? A. Yes.

Q. In what department did he function? A. Sales.

Q. Did you hire, since August 23, 1974, any full-time sales personnel? A. No.

Q. Was Thomas Dodge a full-time salesman? A. Yes.

Q. Was Thomas Dodge a racing enthusiast?

* * * *

454

A. Not as such.

Q. Now, is there a difference among motorcycle owners between racing enthusiasts and those who are not racing enthusiasts?

MS. JOHNSON: Objection.

I don't understand the relevance of this.

JUDGE WAGNER: He said he will connect it.

MR. POLLACK: I will.

A. Yes.

Q. Now, you have hired certain employees into the sales department since August 23, 1974; correct? A. Yes.

Q. How many at a time?

In other words, how many job slots have been filled?

A. One, with the possible overlap of a week or two, or two.

Q. Was that a full-time position? A. No; part time.

MS. JOHNSON: Who was hired?

Who are you referring to?

THE WITNESS: High school kids.

BY MR. POLLACK?

Q. Do you know their names? A. I think one of them was Daniel Schultz, and -- well, Barry Rifle is one of them.

455

Q. And these were part-time employees? A. Yes.

Q. And were these employees racing enthusiasts? A. Yes.

Q. And was that a requirement of their being hired? A.

We looked for it, yes.

Q. For what reason? A. The participate at the races. In fact, they themselves race.

As a result of it, the publicity to our company is just overwhelming, the fact that they're employed by us.

Q. Did Mr. Dodge participate at races? A. Not to my knowledge.

Q. How, you terminated Stewart Lilker for lack of work. Is that correct? A. That's correct.

Q. In what department did he function? A. Service.

Q. And since that time, have your hired anybody -- since August 23rd -- strike that.

Since Mr. Lilker was terminated, did you hire anyone into the service department? A. Yes, we did.

Q. Whom did you hire into how many slots? A.

A. We hired a Mr. J. Wilner to replace John Steindel, who had left us on 9/14/74.

Q. And John Steindel was an employee who was there prior to August 23rd? A. Yes.

Q. And he left because you -- because he couldn't agree on hours? A. No.

He --

Q. Strike that. A. He went to work for his dad.

Q. He self-terminated? A. Yes.

Q. And you hired a replacement for him? A. Right.

Q. And what was the date, if you know, of Mr. Steindel's termination? A. He terminated on 9/14. We hired J. Wilner on 9/21.

Q. Mr. Lilker performed what function in the service department?

Would you say he was a mechanic? A. A mechanic, but not a full-fledged mechanic.

Q. And the other gentleman's name was Steindel? A. Steindel, yes.

Q. What was his capacity? A. His capacity was as a full-fledged mechanic.

457 Q. Could Mr. Lilker replace Mr. Steindel in point of view of abilities?

* * * *

A. No, he couldn't.

Q. Incidentally, Mr. Zegarek, were you -- were you ever advised that Mr. Lilker had opened his own business?

A. Yes.

* * * *

Q. And when Mr. Steindel left, did you consider taking
458 Mr. Lilker back? A. Yes.

I discussed it with Phil.

Q. And did you make a decision in that regard? A. Yes.

We made a decision --

Q. Would you tell us the decision which you made and the basis for that decision? A. Yes.

Mr. Lilker told Phil personally that he was running his own business like he had prior to being employed by us, that he was in the process of enlarging it, that presently he was servicing foreign cars and motorcycles. And in light of that, I couldn't see bringing in a competitor back into the organization to compete directly with us because it would be a conflict of interest.

Q. You terminated Dario Ardito for lack of work.

Is that correct? A. Yes.

Q. In what department did he function? A. Mainly in -- his main scope was warranty.

Q. Did you hire anybody into that area? A. No.

* * * * *

459 Q. Will you describe what you mean by "warehouse inventory"? A. Once a year, commencing with approximately October-November of the year, we take a complete inventory of our parts and accessories in all of our buildings for accounting purposes as well as for our own purpose.

Q. Do your accountants require of you any particular qualifications of the persons involved in taking the inventory?

A. Yes.

* * * * *

A. They want our management to oversee, but they want entirely new people that have no association with us prior to do the inventory.

Q. And are those inventory takers hired for a specific period of time? A. Yes.

Q. Until when? A. Until finished.

Q. And at which time what happens with their employment?

A. It's terminated.

* * * * *

Q. -- how many slots were filled since September 1, 1974. And give us the department. A. Okay.

461 Service department, J. Wilner replace John Steindel.

Service department -- rather. V. A. program, John O'Donnell replaced David Baldasarra.

Q. Now, in your V. A. program, do you have eligibility requirements? A. Yes.

Q. And can you put anybody you want into that program?

A. No.

* * * *

A. Well, the basic limitation is that you should have been a veteran to be eligible.

Q. Did you have any employees whom you had terminated on or before September 1, 1974, who would have filled the eligibility requirements of that position? A. Yes.

* * * *

A. Stewart Lilker.

* * * *

Q. Did you ever offer Lilker a job in that position? A. Yes.

* * * *

Q. And did he ever accept those offers? A. No, he didn't.

462

Q. Would you tell us the most recent offer that you had, prior to his separation, that you made to him? A. I'd say approximately 30 days prior to him being severed.

* * * *

Q. How many slots in the mail order department? A. One.

Q. Did you have anybody on who you had severed for lack of work available to do that? A. No.

When Dyroff left, Richard Schreck took his position.

Q. Dyroff left under what circumstances? A. He went to work for his uncle.

Q. He self-terminated? A. Yes.

* * * * *

A. Then Richard Schreck was hired. He stayed employed from 9/14 to 10/26. Then he left for a -- and then Steven Silverberg replaced him on 10/26.

* * * * *

464

Q. Is that the extent of the new job slots that were -- or the job slots that were filled between September 1, '74, and today? A. To the best of my knowledge, with one additional, Richie Janelli, who was hired on 10/12/74 --

Q. Into what job slot? A. Maintenance and assembly. When I say "maintenance," I don't mean motorcycle maintenance.

* * * * *

Q. What kind of work? A. Construction with the building.

* * * * *

Q. Did any of the people who testified in this proceeding work in the maintenance-assembly job category?

465

A. No, no. Only in assembly, to some extent.

Q. Who? A. Steward Lilker and Siegfried.

Q. And Siegfried was -- you terminated because of lack of the hour flexibility?

* * * * *

466

RECROSS-EXAMINATION

BY MS. JOHNSON:

Q. When did you hire Danny Schultz? A. I'd have to look at the cards.

Q. Here.

(Handling.) A. 8/31/74.

Q. Was that the week ending?

Did he start on the first of the week, which was the 26th? A. I would think so, according to this, if I read it right, yes.

Q. So that you might have hired him sometime before 8/26? A. Yes, yes.

Q. And when did John Ryan get hired? A. 8/31.

Q. That's again the week ending? A. Yes.

Q. Did he work that week? A. Yes, I would say he did, or part of that week.

Q. So he started -- A. I don't know what day he started.

Q. How, is he still working for you? A. Yes, he is.

467

Q. And he works in the sales? A. No.

He works -- not in sales. He's mainly in mail order, in fact temporary sales mail order.

Q. But he's working for you in both departments? A. Not really, no.

Q. He's only working in mail order? A. Mail order, yes.

Q. So the legend doesn't mean anything here when it says "Sales"? A. No. It doesn't. It's a temporary mail order.

Sales mail order means he takes the phone calls on mail orders.

MR. POLLACK: Can we just have a stipulation as to what the ledger actually says, Ms. Johnson?

MS. JOHNSON: Yes.

MR. POLLACK: It actually says "Temp sales mail order."

Will you so stipulate?

MS. JOHNSON: Surely.

JUDGE WELLES: Thank you.

* * * *

469

REDIRECT EXAMINATION

BY MR. POLLACK (Cont'd):

Q. I show you the cards of John Ryan and Daniel Schultz, and ask you if either of these employees are full-time employees?

(Handing.) A. No.

They are both part-time employees.

Q. Thank you.

MR. POLLACK: No further questions.

RECROSS-EXAMINATION

BY MS. JOHNSON (Cont'd):

Q. How many hours a week did they work?

MR. POLLACK: Where's the hours? Here (indicating).

MS. JOHNSON: I believe so.

Well, I really don't know.

MR. POLLACK: It looks like it. A. Let me see it.

MR. POLLACK: Here.

(Handing.) A. I can do it by machine.

MR. POLLACK: No, no.

MS. JOHNSON: The hours must be on there.

MR. POLLACK: I think the hours are here, aren't
they?

THE WITNESS: All right.

We divide -- we'll say an average of --

MS. JOHNSON: Well, this is they pay; right?

MR. POLLACK: But they're earning \$2 an hour.

THE WITNESS: \$5 to 20 hours a week, approximately.

MR. POLLACK: For both?

MS. JOHNSON: No, each one is working 15 to 20 hours a week.

MR. POLLACK: All right.

JUDGE WELLES: Is that the testimony that each one is working 15 to 20 hours a week?

MR. POLLACK: Do each one of them work approximately 15 to 20 hours a week?

THE WITNESS: That's correct.

Did you have any conversations about your being responsible for them?

Just tell us what conversations you had with respect to any responsibilities that you had with respect to those individuals. A. One day at work, Philip Zegarek approached me and asked to speak with me in the office. He went into the office.

He showed me a list of things which he said that I was to be responsible for to see that these items were to be carried out.

He explained to me that when any of the salesmen didn't have anything to do, that they were instructed to come to me and ask me for something to do and I was to give them something to do from this list.

Q. And that was the list you testified to earlier; is that right? A. Yes.

Q. Did Mr. Morris Zagarek ever tell you you had the right to fire employees? A. No.

Q. Mr. Kocivar, did Mr. Morris Zatarel ever tell you that you were responsible for the sales department? A. No.

Q. Did Mr. Morris Zegarek ever tell you you had the right to hire employees for the sales department? A. No.

Q. On your application form, which is Respondent's Exhibit 6 in Evidence, do you know anything about the words "Sales Mgt"?

MS. JOHNSON: No further questions.

MR. POLLACK: Nothing further.

JUDGE: Thank you.

You may be excused.

THE WITNESS: Thank you very much.

(Witness excused.)

JUDGE WELLES: Does the Respondent rest?

MR. POLLACK: Yes.

* * * *

471

DAVID KOCIVAR

called, as a witness, having been previously sworn by Judge Welles, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MS. JOHNSON:

Q. Mr. Kocivar, were you ever told that you were responsible for the people in the sales department -- Tom Dodge, Skip and Richie? A. Responsible in what respect?

473

Is that your writing? A. No, it is not.

Q. Did you have any conversation about management when you were hired? A. No, I did not.

Q. Had you seen your application before today with that writing on it? A. No, I had not.

Q. When was the first time that you became aware that you were being considered for a man~~a~~gement position? A. The first time I became aware that I was being considered for a management position was on Friday, the day before my employment was terminated.

Q. In the course of your work, did you sell bicycles that were for racing? A. Bicycles?

Q. I'm sorry, motorcycles. A. Yes, I did.

Q. Do you have any idea the percentage of the sales of motorcycles that were -- of that particular kind of motorcycle? A. From my experience, I would estimate a very low percentabce, perhaps five per cent.

* * * * *

475

CROSS-EXAMINATION

BY MR. POLLACK:

Q. What time did he report? A. Who?

Q. Dyroff. A. He reported for work sometime in the afternoon, I believe.

* * * * *

476

Q. What time did you -- did you usually see him in the morning? A. Yes.

Q. What time do you report to work? A. 9:00 o'clock in the morning.

* * * * *

477 Q. Is there normally a time clock -- is there a time
clock which you punch? A. Yes.

* * * * *

478 MR. POLLACK. No, I'm not saying -- your Honor, the
thrust of the testimony is that certain people are hired because
they are present at races and participate.

JUDGE WELLES: Therefore, bring honor and fame to
the company

MR. POLLACK: Exactly right.

* * * * *

Q. Do you participate in the motorcycle races? A. No.

* * * * *

479 JUDGE WELLES: Were you ever asked if you participate
in races by Mr. Zegarek?

THE WITNESS: No.

BY MR. POLLACK:

Q. Were you ever told by either Phil or Morris Zegarek
that you were to report the improper work performance of the
people in the sales department with whom you worked?

Were you supposed to tell him if any of these people
weren't doing their job right? A. No.

Q. But you did anyway? A. Yes.

* * * * *

482

STEWART LILKER

* * * * *

Q. Mr. Lilker, did you have any discussions with
Mr. Morris Zegarek concerning V.A. -- A. Yes.

Q. -- employment?

* * * *

483

He asked me if I was eligible for the V. A.

I said that I had used up all of my benefits and I was 99 per cent sure that I had no benefits left, because I used it up to go to college.

* * * *

484

Mr. Zegarek was here. When I went up and I said "Hello" to him, and I shook hands with him, he said, "I hear you're in business for yourself."

I said, "Well, I'm doing a little bit of this and a little bit of that."

That was the extent of the conversation.

* * * *

485

BY MR. POLLACK

Q. What is it that you're doing? A. Mostly work for barter.

Q. For barter? A. Yes, sir.

Q. Meaning you perform work and you don't get paid but you get something, goods, in replacement for the work that you do? A. No. It's mainly friends of mine who I'm trying to give a hand and they give me a hand.

I do no work for strangers.

Q. You mean you perform work for friends of yours that are in business and they don't pay you?

MS. JOHNSON: Objection.

JUSGE WELLES: Sustained to the whole line.

BY MR. POLLACK:

Q. Did you indicate to Mr. Zegarek at any time during your employment that you could not fill the V. A. training slot in Honda? A. Yes, I did.

MR. POLLACK: Thank you.

Nothing further.

REDIRECT EXAMINATION

BY MS. JOHNSON:

* * * *

486 Q. Would you describe your experience? A. Yes.
I began working on automobiles in 1963 when I was
in high school. 1964 through 1965 I worked for a Frenchman
487 repairing sports cars and building race cars.

At that time I also attended the State University of New York at Farmingdale and took their automotive technology course, which was concerned with the mechanics of automobiles exclusively.

From there I went into the service. I was a hydraulic mechanic, flightline mechanic.

* * * *

I went to Honda school -- I went to the last Honda school.

* * * *

Q. How long was that last Honda school that you went to?
How long did it last?

488 A. One week.

Q. Now, tell me, before you got your job on Honda, other

than working on your own 750, what work had you done on motor-cycles? A. You mean specific jobs?

Q. No.

How much of your experience was on motorcycles?

A. Quite a bit.

* * * *

Q. What did you do on them? A. Changed tire, did valve jobs, rebuilt engines.

Q. Is that what you said in your original letter? A. No.

I said I hadn't had much experience with Hondas and that much with motorcycles in general.

Q. Except for tune-ups; correct? A. I might have.

However, I did more than tune-ups.

I could have said that in the letter, I'm not denying that. I just said tune-ups in the letter. However, at that time I didn't want to make myself look more overqualified than I actually was because I didn't work on that many Hondas.

Q. This training that you receive in the army--

A. In the air force.

Q. In the air force, excuse me.

That training, is that hydraulic knowledge in your use on Hondas? A. Yes, it is.

Q. In what regard? A. Anything that has to do with chassis and brakes, steering.

* * * *

Mr. Zegarek never mentioned anything about the quality of my work.

The only thing he mentioned was that he didn't feel that the quantity was what it should be. He never said I was a bad mechanic.

* * * * *

BY MR. POLLACK:

Q. Were there any mechanics working with you in the shop? A. Yes, there were.

490 Q. And were there any of those mechanics who, in your opinion, possessed a greater degree of ability than you? A. Yes.

Q. How many? A. One.

Q. Who? A. Bob Moraglio. He's probably one of the best mechanics I've ever seen.

* * * * *

491 THOMAS HOWARD DODGE

called as a witness, having been previously sworn by Judge Welles, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MS. JOHNSON:

Q. Mr. Dodge, were you ever told that David Kocivar was your boss? A. At the beginning of my employment I was told that Dave along with John and Skip would help me learn the ropes and that throughout my employment there Dave was always helping me and directing me along my way as to becoming a decent salesman.

About half way through my employment there, he all of a sudden seemed to have a little more authority, and he was telling me to clean the bikes a little more often and stuff.

492

I resented this. I already thought I had enough bosses I had.

Mr. Zegarek, Mrs. Zegarek and Phil were my bosses. I felt this was little bit too much.

So I went into the office and spoke with Phil. He told me that Dave wasn't a manager, that he was just to look over the shop and make sure these things get done. He told me that I wasn't to take it against him or anything like that. I was just to follow his orders.

I was also given -- he showed me the sheet of duties he had to perform, most of which I was already told by Phil and Mr. Zegarek to do myself.

Q. Which were these duties? A. To make sure that the bikes were kept clean, that stock was out. That was my basic job, in essence.

Also, to make sure that the cases are clean and answer the phone.

Q. When you wanted a day off, did you ask David Kocivar?
A. No.

Q. Who would you ask?

MR. POLLACK: Your Honor, there are some 28 indicia of supervisory --

JUDGE WELLES: I don't think we need to go through the others.

493

There's no contention that he did have those.

MR. POLLACK: That's correct.

(Laughter.)

A. I was never told.

Q. What sorts of things did David Kocivar tell you to do, if any? A. Usually just he'd bring to my attention a customer was outside and needed to be written in for servicing and that the bikes might be in the showroom might need to be cleaned.

And -- that's about it, really.

* * * *

KENNETH C. RUPPEL

called as a witness, having been previously sworn by Judge Welles, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MS. JOHNSON:

Q. Mr. Ruppel, did you know an employee at Honda named 494 Dario Ardito? A. Yes, I did.

Q. What department did he work in? A. He worked with me in the parts department.

Q. In the course of your work, did you have an opportunity to observe what Dario did? A. Yes, I did.

Q. Could you tell us what Dario did? A. Along with his warranty duties, Dario would also help customers at the counter, pull parts from the -- pull parts for mechanics, pull mail order and help receive shipments.

Q. Do you have any idea what the percentage of his time he was doing those latter duties? A. I would say approximately 50 to 75 per cent.

Q. Who works in the parts department with you now? A. There's myself, Harry Wachter -- the manager -- Mark Schmidt, and Jim, whose last name I don't recall.

Q. What does Jim do? A. Jim is taking in inventory.

He, also, pulls mail orders and helps to receive shipments.

Q. Is anybody other than Jim working in inventory?

A. The rest of the parts employees, including myself, are also taking inventory.

* * * *

495

Q. When you say you're helping in taking the inventory, isn't it a fact that what you do basically is straighten out the bins and then Jim comes out and counts? A. No, it is not.

Q. Nobody described that to you as your function? A. What I am doing now is that I was assigned an aisle to do by Harry Wachter.

As I go through the aisle, I will take out a bin, find the -- write down the description of the part and the quantity.

Q. And does Jim check over what you've done? A. He hasn't checked any of my work so far.

UNITED STATES OF AMERICA
 BEFORE THE NATIONAL LABOR RELATIONS BOARD
 REGION 29

* * * *

MOTION TO CORRECT THE
 OFFICIAL REPORT OF PROCEEDINGS

Counsel for the General Counsel hereby moves the Administrative Law Judge to correct the transcript in the above-captioned matter as follows:

<u>Page</u>	<u>Present Transcript</u>	<u>Should Read</u>
p. 37, l. 12 and 15	"General Counsel's Exhibit 2A -4"	"General Counsel's Exhibit 2A -H"
p. 39, l. 9, 10	"General Counsel's Exhibit 1A -4"	"General Counsel's Exhibit 2A -H"
p. 40, l. 13 and 25	"General Counsel's Exhibit 3"	"General Counsel's Exhibit 2I"
p. 41, l. 21	"General Counsel's Exhibit 4"	"General Counsel's Exhibit 2J"
p. 42, l. 16	"General Counsel's Exhibit 4"	"General Counsel's Exhibit 2J"
p. 70, l. 6	"Mr. Dyroff the employee"	"Mr. Dyroff, the employer"

Counsel for the General Counsel further moves that the following Exhibit Numbers be assigned to the authorization cards of the following individuals:

GENERAL COUNSEL EXHIBIT NO.

2A
2B
2C
2D

NAME

Dario Ardito
Kenneth C. Ruppel
David Kocivar
Glenn Musano

2E
2F
2G
2H
2I
2K

Robert Siegfried
Thomas Dodge
Steven Dyroff
Stewart Lilker
John Steindl
David Paul Baldesarr..

Dated at Brooklyn, New York this 4th day of December 1974.

Respectfully submitted,

/s/ Elizabeth Kinney
Elizabeth Kinney
Counsel for the General Counsel
National Labor Relations Board
Region 29
16 Court Street
Brooklyn, New York 11241

TO: Melvin J. Welles,
Administrative Law Judge
National Labor Relations Board
Division of Judges
Washington, D.C. 20570

Two Wheel Corp. d/b/a Honda of Mineola
336 Jericho Turnpike
Mineola, New York

Gutterman & Pollack
Attn: Sanford Pollack
71 South Central Avenue
Valley Stream, New York 11580

Amalgamated Local Union 355
37-17 76th Street
Jackson Heights, New York 11372

GENERAL COUNSEL'S EXHIBIT NO. 1(g)

ORDER CONSOLIDATING CASES, COMPLAINT
AND NOTICE OF HEARING

* * * *

15. On or about August 26, 1974, the following named employees of Respondent through their representative Richard Shirk, an agent of the Union, made unconditional offers to Respondent to return to work and to their positions of employment:

Stewart Lilker	Steven Dyroff
Robert Siegfried	Kenneth Rupple
Albert Antonson	David Kocivar
Thomas Dodge	Dario Ardito

* * * *

GENERAL COUNSEL'S EXHIBIT NO. 2(a)

AMALGAMATED LOCAL UNION 355 8/23/74

37-17 76th St., Jackson Heights, N.Y. 11372 — Telephone OL 1-3717

Name ARDITO DARIO
 First Name DARIO
 Last Name
 Home Address 49 N. ROCKAWAY Ave
 Shop Honda of Mineola Address 336 Jericho Tpk.

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees (as my membership dues) in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me as of any anniversary date hereof or termination date of collective bargaining agreement, which ever occur sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date 8/23/74 Signature Xario Ardito

GENERAL COUNSEL'S EXHIBIT NO. 2(b)

AMALGAMATED LOCAL UNION 355 8/23/74

37-17 76th St., Jackson Heights, N.Y. 11372 — Telephone OL 1-3717

Name Kenneth C. Poppel
 First Name Kenneth
 Last Name Poppel
 Home Address 3604 Wyman St. Seaford N.Y. 11783
 Shop Honda of Mineola Address 336 Jericho Tpk.

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees (as my membership dues) in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me as of any anniversary date hereof or termination date of collective bargaining agreement, which ever occur sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date 8/23/74 Signature Kenneth C. Poppel

GENERAL COUNSEL'S EXHIBIT NO. 2(c)

AMALGAMATED LOCAL UNION 355

37-17 76th St., Jackson Heights, N.Y. 11372 Telephone OL 7-37

8/23/74

Name **DAVID KOCIVAR**
First Name **KO** Last Name **KOCIVAR**
Home Address **206 Jerusalem Ave.**
Shop **HONDA OF MINNEAPOLIS** Address **336 Tevisco Dr.
MINNEAPOLIS**

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees (as my membership dues) in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me as of any anniversary date hereof or termination date of collective bargaining agreement which ever occur sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date

8/23/74

David Kocivar
Signature

GENERAL COUNSEL'S EXHIBIT NO. 2(d)

AMALGAMATED LOCAL UNION 355

37-17 76th St., Jackson Heights, N.Y. 11372 Telephone OL 7-37

8/23/74

Name **GLEN MUSAKO**
First Name **GLEN** Last Name **MUSAKO**
Home Address **61 EAST VIEW RD UK Ronkonkoma**
Shop **Honda of Minneapolis** Address **336 Tevisco Dr. Minneapolis, NY**

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees (as my membership dues) in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me as of any anniversary date hereof or termination date of collective bargaining agreement, which ever occur sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date

8/23/74

Glen J. Musako
Signature

GENERAL COUNSEL'S EXHIBIT NO. 2(e)

AMALGAMATED LOCAL UNION 355

8/23/74

37-17 76th St., Jackson Heights, N. Y. 11372 — Telephone OL 1-37 9

Name *Robert Siegfeld*
 First Name *Robert* Last Name *Siegfeld*
 Home Address *83 Surrey Dr. E. Meadow, NY 11554*
 Shop *Honda Mineola* Address *336 Echo Tree*

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees (as my membership dues) in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me as of any anniversary date hereof or termination date of collective bargaining agreement, which ever occurs sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date *8/23/74*

Robert E. Siegfeld Signature

GENERAL COUNSEL'S EXHIBIT NO. 2(f)

AMALGAMATED LOCAL UNION 355

37-17 76th St., Jackson Heights, N. Y. 11372 — Telephone OL 1-37 9

Name *David Paul Baldassarra*
 First Name *David* Last Name *Baldassarra*
 Home Address *11 ROOSEVELT AVE., NESCONSET, N.Y. 11767*
 Shop *HONDA - MINEOLA* Address *RT. 25A, MINEOLA, N.Y.*

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees (as my membership dues) in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me as of any anniversary date hereof or termination date of collective bargaining agreement, which ever occurs sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date *Aug. 3, 1974*

David P. Baldassarra Signature

GENERAL COUNSEL'S EXHIBIT NO. 2(g)

AMALGAMATED LOCAL UNION 355 8/23/74

37-17 76th St., Jackson Heights, N.Y. 11372 Telephone OL 1-37

Name STEVEN DYROFF
 First Name Last Name
 Home Address 139 HARPERWOOD RD. MINEOLA, N.Y.
 Shop HONDA OF MINEOLA Address 336 JERICHO TURNpike
 N.Y.

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees (as my membership dues) in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me as of any anniversary date hereof or termination date of collective bargaining agreement, which ever occur sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date 8/23/74

S. D. Dyroff

Signature

GENERAL COUNSEL'S EXHIBIT NO. 2(h)

AMALGAMATED LOCAL UNION 355 8/23/74

37-17 76th St., Jackson Heights, N.Y. 11372 Telephone OL 1-37

Name ALBERT ANTONSON
 First Name Last Name
 Home Address 747 ARTHUR ST., W HEMP, N.Y. 11552
 Shop HONDA OF MINEOLA Address 336 JERICHO TURNpike, MINEOLA
 N.Y.

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees (as my membership dues) in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me as of any anniversary date hereof or termination date of collective bargaining agreement, which ever occur sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date 8/23/74

Albert A. Antonson Signature

GENERAL COUNSEL'S EXHIBIT NO. 2(i)

AMALGAMATED LOCAL UNION 355 8/23/71

37-17 76th Street, Jackson Heights, N.Y. 11372 Telephone OL 1-3737-84

Name *Howard S. Littkev*
 First Name *Howard* Last Name *Littkev*
 Home Address *37 17th K Ave, Jackson, N.Y.*
 Shop *Honda of Queens* Address

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees (as my membership dues) in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me as of any anniversary date hereof or termination date of collective bargaining agreement, which ever occur sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date *8/24/71*Signature *[Signature]*

GENERAL COUNSEL'S EXHIBIT NO. 2(j)

AMALGAMATED LOCAL UNION 355

37-17 76th Street, Jackson Heights, N.Y. 11372 — Telephone OL 1-37

Name *John Steinle*
 First Name *John* Last Name *Steinle*
 Home Address *20 Hawthorne St. (J.W.P.)*
 Shop *Honda of Mineola* Address *336 Sericho Turn.*

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees (as my membership dues) in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me as of any anniversary date hereof or termination date of collective bargaining agreement, which ever occur sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date *8/24/71*Signature *[Signature]*

GENERAL COUNSEL'S EXHIBIT NO. 2(k)

AMALGAMATED LOCAL UNION 355

37-17-769 Jackson Heights, N.Y. 11372 Telephone: OI 1-37-11767

Name I ANNE PAUL BALDASSARE
First Name Last Name
Home Address 11 ROOSEVELT AVE., KELSOSET, N.Y.
Shop MUNDA - MINOLA Address WT 25A, N.Y. 11501, N.Y.

I hereby apply for membership in "AMALGAMATED LOCAL UNION 355," and authorize and designate this union to represent me for collective bargaining with my employer.

I hereby authorize and direct my employer to deduct from my wages and to pay over to Amalgamated Local Union 355, such amounts including dues and initiation fees, as my membership dues in said Union as may be established by the Union and become due to it from me during the effective period of this authorization. This authorization may be revoked by me by or any anniversary date hereof or termination date of collective bargaining agreement which ever occurs sooner, by written notice signed by me. This authorization shall automatically renew itself unless written revocation is submitted.

Date Sept. 3, 1971 *Anne Paul Baldassare*
Signature

GENERAL COUNSEL'S EXHIBIT NO. 4(a)

David Kocivar

May 2, 1974

Ref: Work Schedules for IN-SEASON in accordance with 3/2 Formula
Our letter of January 25, 1974

Our projections of 40% over the 1973 year are a reality in view of the past months' sales. Each department has increased as a result of our sales increases. In order to support the increase, your individual work pledge must be kept. We will supply each employee with his January pledge and with his actual average hours worked during March and April. Remember it only takes one to hold back the 100% PARTICIPATION required.

If we are to guarantee 12 months' employment we must meet the schedule. Let's have your cooperation. We have May, June, July and August to average the required 3/2 Formula.

YOUR ACTUAL HOURS WORKED IN MARCH AND APRIL 58 per week

YOUR PLEDGE Not Applicable

Guarantee 3/2
39

GENERAL COUNSEL'S EXHIBIT NO. 4 (b)

DAVID KOCHYNA

13 weeks

755	T
755	T
13	T
58	T
1	T

May-June-July

CCW

ST
Report IX

GENERAL COUNSEL'S EXHIBIT NO. 5

Mrs. Sandford Brown
377 South Harrison Street
East Orange, New Jersey 07018

July 1, 1974

Mineola Honda
Route 25
Mineola, N.Y.

Attention: Owner and Manager

Dear Sir:

Earlier today my nephew, Ward Ogden from Port Washington, and I were in the parts department of your "beautiful" shop. Besides some goggles, socks, gloves in that area, he needed a chain and I believe some kind of grips for the foot rests on his Honda.

Until we came to the final item there was no problem. Though I observed all the young men in the Parts Dept. were most courteous and attentive to their customers I shall be eternally grateful that Glenn Musano took care of Ward. He had great difficulty in locating a matched pair of these "grips", but never have I seen such diligence, patience and perseverance. He found a pair, thankfully.

Before leaving the store I spoke to a man in charge who said he was not the boss -- but I failed to ask the name of this gentleman, whom I hope I am addressing. Needless to say he was pleased to get a good report on one of your employees. To me it is important that such observations are reported. People are too prone to complain, but fail to realize how important it is to praise, where praise is due. And Glenn deserves to be recognized, if only for this single performance. But I am of the opinion that if I had the opportunity to watch his performance

throughout one full working day, he would still rate AAA.

I hope you will take the time to give him a word of appreciation and applause for a job well done. One never knows how far-reaching such a simple act may be and how it might influence the future of a young man or woman.

You obviously deserve some credit for Glenn's loyalty to his job. Your shop reflects good management. My sincere wishes for your continuing success --

/s/ (Mrs.) Carolyn L. Brown

GENERAL COUNSEL'S EXHIBIT NO. 7

HONDA OF MINEOLA
A DIVISION OF TWO WHEEL CORP.
336 Jericho Turnpike . Mineola, New York 11501 . 516 248-5775

Steward Lilker

May 2, 1974

Ref: Work Schedule for IN-SEASON in accordance with 3/2 Formula

Our letter of January 25, 1974

Our projections of 40% over the 1973 year are a reality in view of the past months' sales. Each department has increased as a result of our sales increases. In order to support the increase, your individual work pledge must be kept. We will supply each employee with his January pledge and with his actual average hours worked during March and April. Remember it only takes one to hold back the 100% PARTICIPATION required.

If we are to guarantee 12 months' employment we must meet the schedule. Let's have your cooperation. We have May, June, July and August to average the required 3/2 Formula.

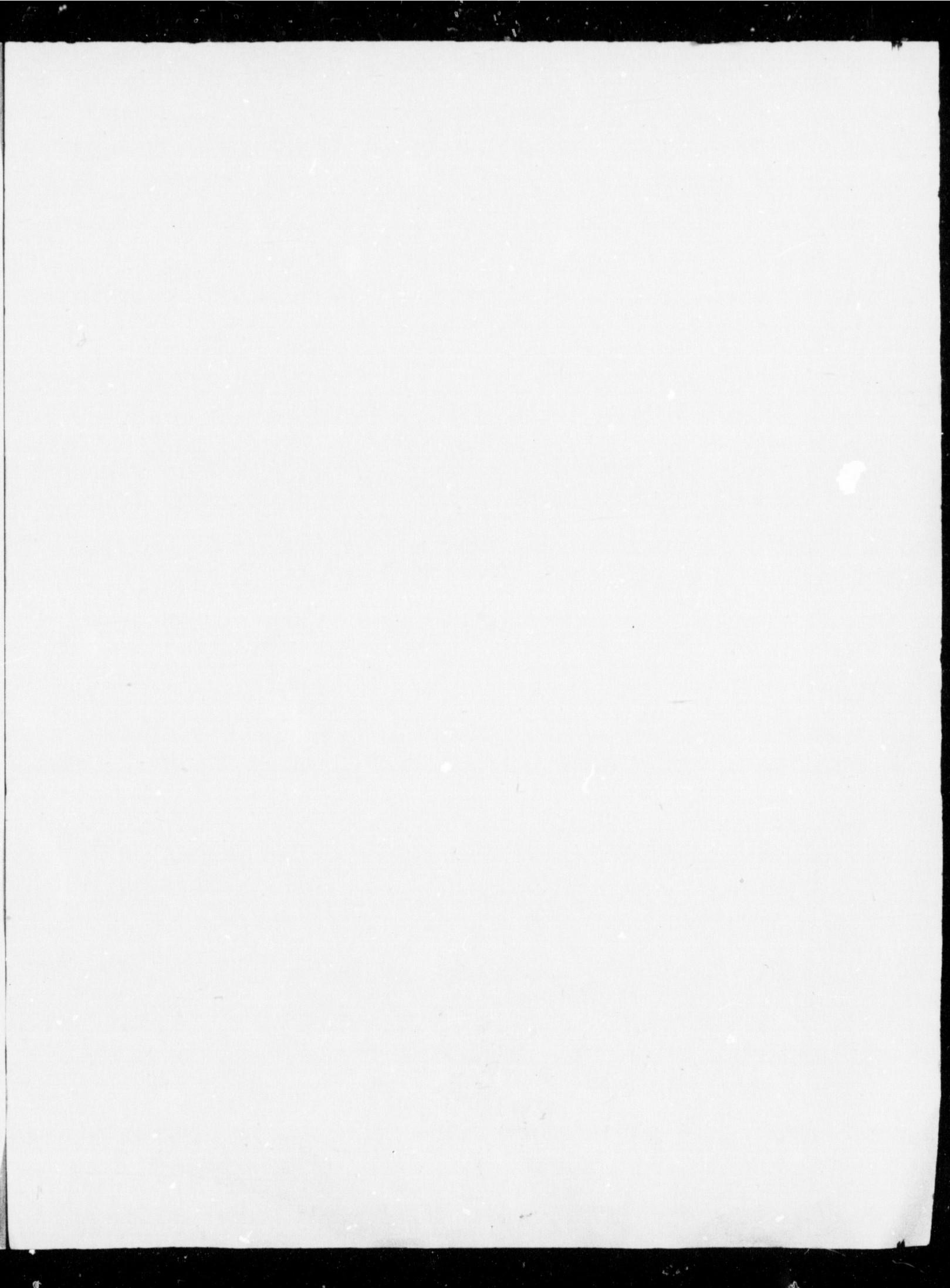
YOUR ACTUAL HOURS WORKED IN MARCH AND APRIL 42 per week

YOUR PLEDGE Not Applicable

Guarantee 3/2
28

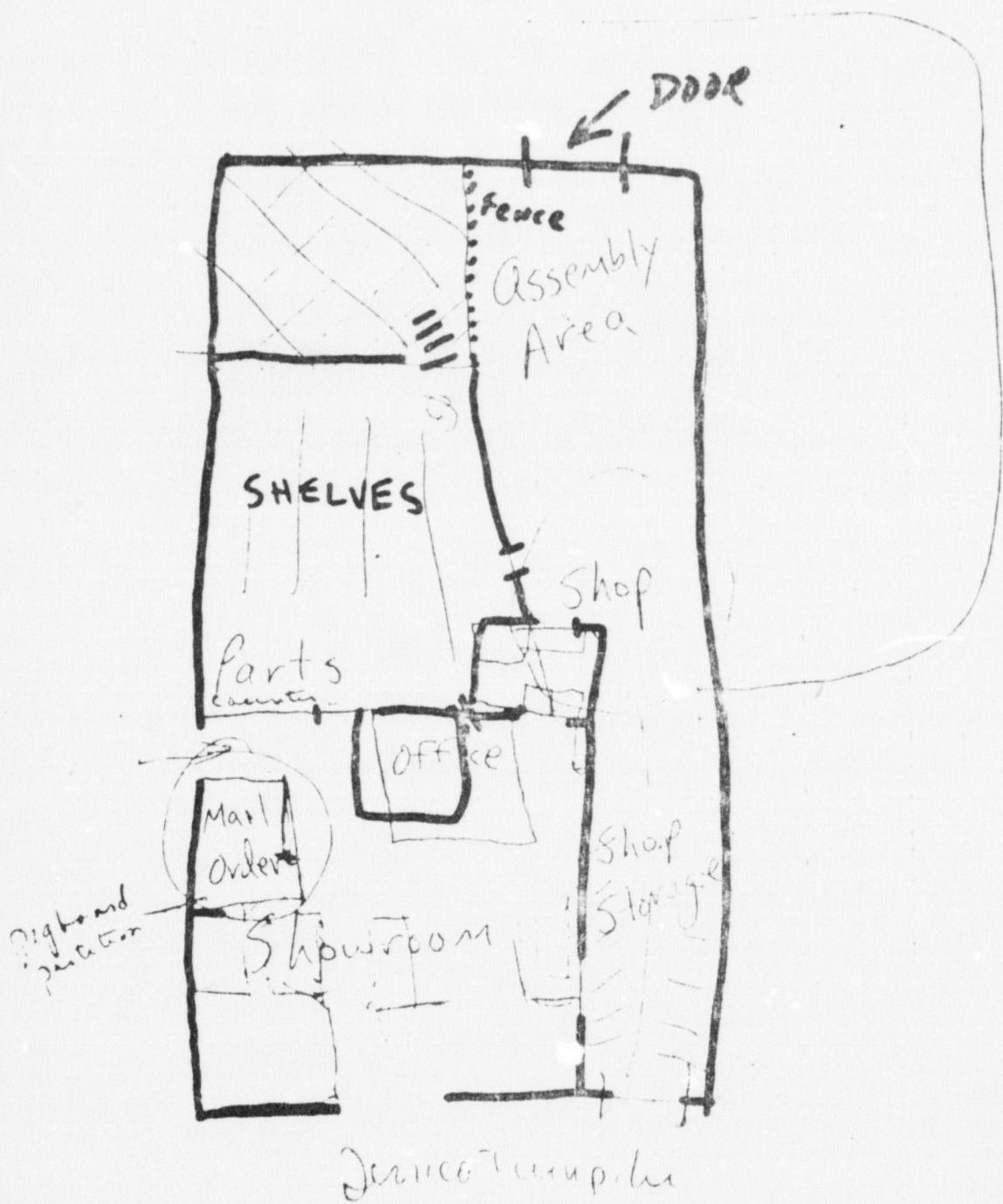
RESPONDENT'S EXHIBIT NO. 2

PAISE		DEDU		NET PAID	
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1511588	150			12	12
15759	115			12	12
17074101387000	10			12	12
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155491124503	10			12	12
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terminated											
QUARTER	3	1761.29	103.43	301.60	67.10	470.	1691.56	FED. W.T.	STATE	NET	
TO DATE		1761.40									
QUARTER	4										
TO DATE											
Deposited 1/22/71 In the name of Date 1/22/71 No. Pages 15 ✓											
R2											
PAYROLL SUMMARY											
GROSS EARNINGS		WITHHOLDING									
		FICA	FEDERAL	STATE	CITY						
1											
2											
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4											

RESPONDENT'S EXHIBIT NO. 3



Physical Volume & Sales Volume ARE Directly in Proportion
& Manpower Requirements in Direct Proportion

RESPONDENT'S EXHIBIT NO. 5

1971

JAN
FEB
MAR
APR
MAY

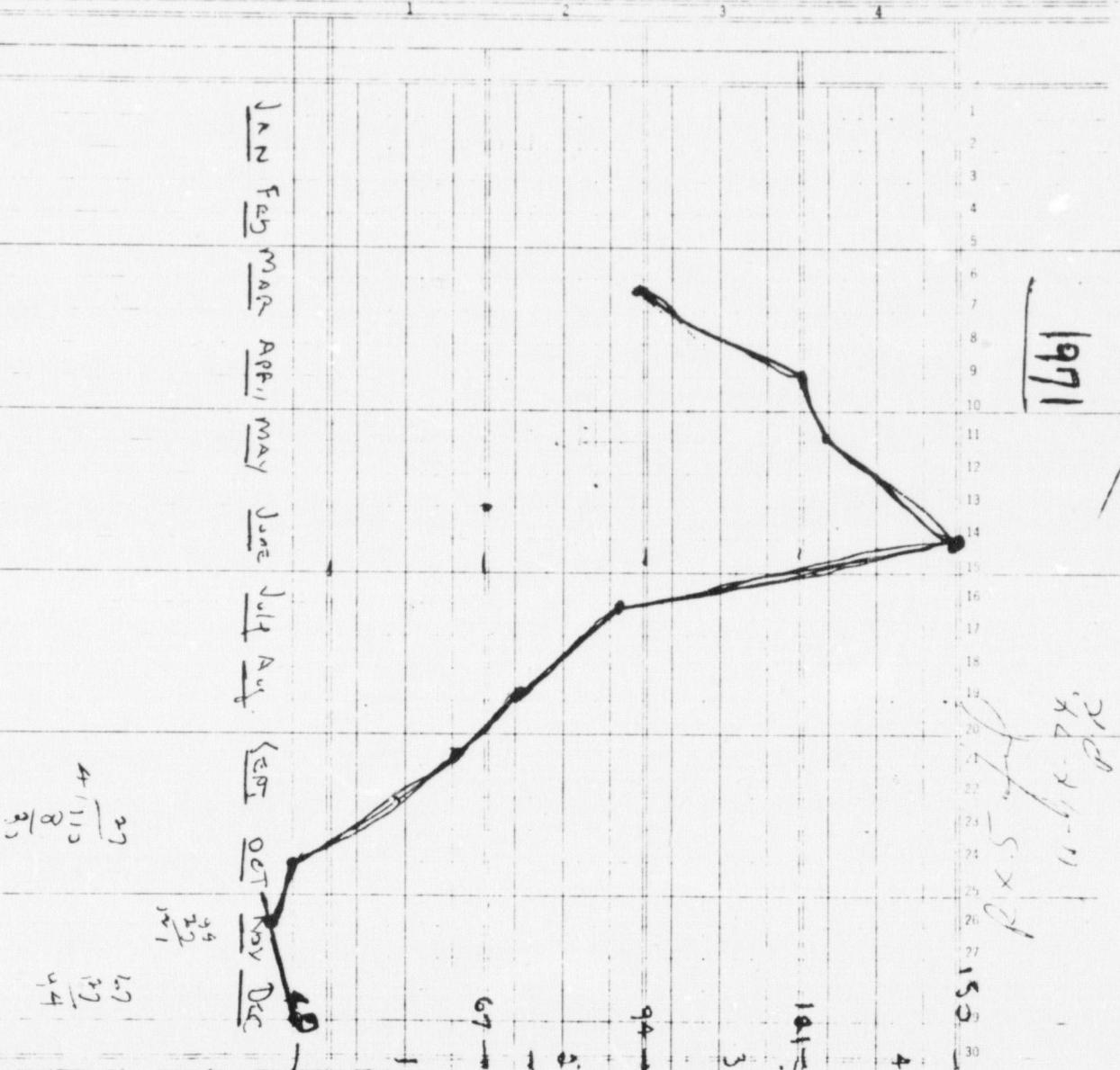
JUN
JULY
AUGUST

SEPT

OCT

NOV

December



RESPONDENT'S EXHIBIT NO. 6

APPLICATION FOR EMPLOYMENT

PERSONAL INFORMATION

NAME Kocivar LAST DAVID FIRST David MIDDLE
 PRESENT ADDRESS 206 STREET Jerusalem Ave. CITY MASSAPEQUA STATE NY
 PERMANENT ADDRESS Sainte STREET CITY STATE
 PHONE NO 798-8561 OWN CAR YES DRIVER'S LIC. #
 DATE OF BIRTH 2-6-52 HEIGHT 56 WEIGHT 110 165
 MARRIED SINGLE WIDOWED DIVORCED SEPARATED
 NUMBER OF CHILDREN DEPENDENTS OTHER THAN WIFE OR CHILDREN
 IF RELATED TO ANYONE IN OUR EMPLOY STATE NAME AND DEPARTMENT REFERRED BY

EMPLOYMENT DESIRED

POSITION Sales Rep DATE YOU CAN START Immediate SALARY DESIRED 200.00
 ARE YOU EMPLOYED NOW? No IF SO MAY WE INQUIRE OF YOUR PRESENT EMPLOYER

EVER APPLIED TO THIS COMPANY BEFORE? No WHERE WHEN

EDUCATION	NAME AND LOCATION OF SCHOOL	YEARS ATTENDED	DATE GRADUATED	SUBJECTS STUDIED
GRAMMAR SCHOOL	<u>R. J. Lockhardt</u> <u>MASSAPEQUA</u>			
HIGH SCHOOL	<u>A.G. BERNER H.S.</u> <u>MASSAPEQUA</u>	<u>1967-</u> <u>1970</u>	<u>1970</u>	
COLLEGE	<u>University of Arizona</u> <u>TUCSON, Az.</u>	<u>1970-71</u> <u>1971-72</u>		<u>Liberal Arts.</u>
TRADE BUSINESS OR CORRESPONDENCE SCHOOL				

SUBJECTS OF SPECIAL STUDY OR RESEARCH WORK Emergency Medical Technician N.Y.S.

WHAT FOREIGN LANGUAGES DO YOU SPEAK FLUENTLY? FRENCH

READ WRITE

(CONTINUED ON OTHER SIDE)

FORMER EMPLOYERS (LIST BELOW LAST FOUR EMPLOYERS, STARTING WITH LAST ONE FIRST)

DATE MONTH AND YEAR	NAME AND ADDRESS OF EMPLOYER	SALARY	POSITION	REASON FOR LEAVING
FROM 9-73 TO 10-73	State Ambulance Ser. Inc. Hicksville, N.Y.	\$3.25/hr.	Ambulance Attendant	Safe Payroll cutback
FROM 1-73 TO 9-73	J.W. PHYS INC. MSSAPEQUA, STORE	\$120.- Wkly.	Buyer Trainee	New Position ↑
FROM 8-72 TO 12-72	Delta Ambulance Ser. Inc. Freeport, N.Y.	\$3.25/hr.	Ambulance Driver/Att.	
FROM TO				

REFERENCES: GIVE BELOW THE NAMES OF THREE PERSONS NOT RELATED TO YOU, WHOM YOU HAVE KNOWN AT LEAST ONE YEAR.

NAME	ADDRESS	BUSINESS	YEARS ACQUAINTED
1 John Manza 11/11	252 Rose St. MSSAPEQUA PK.	TEACHER	5 years.
2			
3			

PHYSICAL RECORD:
LIST ANY PHYSICAL DEFECTS

NONE

WERE YOU EVER INJURED? NO

GIVE DETAILS

HAVE YOU ANY DEFECTS IN HEARING?

NO

IN VISION?

NO

IN SPEECH?

NO

IN CASE OF
EMERGENCY NOTIFY

Julius Kocivar

SAME

SAME

ADDRESS

PHONE NO

I AUTHORIZE INVESTIGATION OF ALL STATEMENTS CONTAINED IN THIS APPLICATION. I UNDERSTAND THAT MISREPRESENTATION OR OMISSION OF FACTS CALLED FOR IS CAUSE FOR DISMISSAL. FURTHER, I UNDERSTAND AND AGREE THAT MY EMPLOYMENT IS FOR NO DEFINITE PERIOD AND MAY REGARDLESS OF THE DATE OF PAYMENT OF MY WAGES AND SALARY, BE TERMINATED AT ANY TIME WITHOUT ANY PREVIOUS NOTICE

DATE 12/10/73

SIGNATURE

Vince Kocivar

DO NOT WRITE BELOW THIS LINE

INTERVIEWED BY

DATE

REMARKS:

HIRE	FOR DEPT	POSITION	WILL REPORT	SALARY WAGES
APPROVED: 1. EMPLOYMENT MANAGER	2. DEPT. HEAD	3. GENERAL MANAGER		



United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,)
Petitioner,)
v.) No. 75-4186
TWO SHEEL CORP. d/b/a)
HONDA OF MINEOLA,)
Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the
APPENDIX in the above-entitled case, on
the following counsel of record, this 29 day of December 1975.

Messrs. Guterman & Pollack
Attn: Sanford Pollack, Esq.,
71 SouthCentral Avenue
Valley Stream, New York 11580

Elliott Moore, Esq.,
Deputy Associate General Counsel
National Labor Relations Board
Washington, D.C. 20570

CASILLAS PRESS, INC.

1717 K Street, N. W.
Washington, D. C. 20036
Telephone: 223-1220

Subscribed and Sworn to before me this